

Special Committee On Criminal Justice Reform  
August 1, 2016

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COUNCIL OF THE CITY OF PHILADELPHIA  
SPECIAL COMMITTEE ON CRIMINAL JUSTICE REFORM

Room 400, City Hall  
Philadelphia, Pennsylvania  
Monday, August 1, 2016  
1:07 p.m.

PRESENT:

COUNCILMAN CURTIS JONES, JR., Co-Chair  
KEVIN J. BETHEL, Co-Chair  
TARIQ K. EL-SHABAZZ, ESQUIRE, Co-Chair  
WILLIAM COBB  
REVEREND ADAN MAIRENA  
RICHARD T. McSORLEY, ESQUIRE  
GEORGE MOSEE, ESQUIRE  
WILFREDO ROJAS  
ANN SCHWARTZMAN  
  
JULIE WERTHEIMER

RESOLUTION: 160101

- - -

1                   COUNCILMAN JONES: Good afternoon,  
2 everyone. This is a hearing that is called to  
3 order for the Special Committee on Criminal  
4 Justice Reform. I recognize the presence of a  
5 quorum. We have cochair, Kevin Bethel; cochair  
6 Tariq Shabazz; Ms. Julie Wertheimer; Wilfredo  
7 Rojas; Richard McSorley; William Cobb; Reverend  
8 Adan Mairena. There you go. After the DNC,  
9 I'm lucky I have my name right. Ann  
10 Schwartzman is also here. And we are going to  
11 ask the clerk to read the title of the  
12 resolution.

13                   THE CLERK: Resolution number  
14 160101. A resolution appointing members to the  
15 Special Committee on Criminal Justice Reform,  
16 who will conduct public hearings examining the  
17 Philadelphia criminal justice system for the  
18 impact of current policies and offer  
19 recommended strategies for reform that are in  
20 the best interest of public safety and the  
21 public good.

22                   COUNCILMAN JONES: Thank you, Ms.  
23 Williams. And thank everyone for coming out  
24 today. You could have been on the beach

1 somewhere, but we are here to try to do good  
2 and do good public policy and looking at the  
3 criminal justice system and try to reform that.

4 Today we have a special guest who's  
5 probably tired from dealing with all of the  
6 activities of the DNC. Shaking his head yes.

7 COMMISSIONER ROSS: You are  
8 correct, Councilman.

9 COUNCILMAN JONES: We have  
10 Commissioner Ross who will begin testimony,  
11 followed by one of our cochairs, Tariq Shabazz.  
12 And the purpose of this is just to talk about a  
13 lot of things have happened in between this  
14 hearing and the last and just to give context  
15 to the where the City of Philadelphia is and to  
16 reassure us that we are in a fairly good place.

17 And with that, Commissioner Ross,  
18 please begin your testimony.

19 MR. BETHEL: Can I say a comment  
20 just before we start? I know I'm probably  
21 speaking on behalf of the Committee and I know  
22 you will probably want to do this. Just to  
23 really thank Commissioner Ross for the work  
24 that was done on the DNC. I know there's a lot

1 of conversation about that. As you know, that  
2 didn't start last week. That started years ago  
3 of walking down that path. I know I'm bias. I  
4 love that guy sitting on the other side of the  
5 table, but I just wanted to really commend you,  
6 Commissioner Ross, and the entire Philadelphia  
7 Police Department for such an excellent,  
8 excellent job dealing with the DNC. And it  
9 really, really makes me proud as a former  
10 deputy commissioner of the police department  
11 working for you, but I'm sure it makes the  
12 citizens of this community very pleased as  
13 well.

14 COMMISSIONER ROSS: Well, thank you  
15 for saying that and I am equally proud of the  
16 men and women of this department all throughout  
17 the ranks who demonstrated professionalism on  
18 that long week and they made us all very proud  
19 and some very tough circumstances, meaning the  
20 heat primarily. And so we're glad it's moved  
21 on and I don't have to see another one for any  
22 time soon, that would be fine. But that being  
23 said, thank you for having me here today. We  
24 are doing a number of things to move this

1 effort along in the way of criminal justice  
2 reform and I'll highlight as many as I can.  
3 But they are not all encompassing, and I will  
4 just say that up front. The biggest one that  
5 you know about is collaborative reform which  
6 you know started under my predecessor, my  
7 mentor and my friend, Charles Ramsey, where,  
8 you know, the Justice Department was brought in  
9 to look at many of our policies. While he was  
10 here, we had gotten, I guess, a third of them  
11 completed. We have continued to move that  
12 forward. We have got -- we had that  
13 collaborative reform group, CNA, come in about  
14 two weeks ago. They were very happy with the  
15 progress that we're making so far.

16 So we're being proactive in our  
17 efforts to, say, improve our interactions with  
18 community on a number of issues, not the least  
19 of which is police-involved shooting and many  
20 other things and endeavors that we have. So  
21 we're very happy about that. We've still got  
22 some work to do as many of the 91  
23 recommendations have several components to  
24 them. So it's not just 91, as you know. There

1 are many, many involved. But we're very happy  
2 about that. We have also undertaken an  
3 endeavor last year with bias-based police  
4 training with Dr. Lorie Fridell. Basically, we  
5 all know we have implicit biases. I don't know  
6 care who you are, what color you are, what  
7 gender you. You have implicit biases. And  
8 it's just matter of getting in tune with those,  
9 getting in touch with those, understanding what  
10 motivates you, understanding what motivates  
11 your thinking and incorporating that whole line  
12 of thought within policing and training. So  
13 all our commanders have gotten that training.  
14 We have got an additional 22 police officers  
15 that have started that training. It's so  
16 important to continue to do this.

17           You know, awareness is the biggest  
18 thing that we have to do and understanding that  
19 we all have issues that we may need to address.  
20 The one that we're probably most proud of is  
21 one that, Councilman, it was started by the  
22 gentleman seated to your left, Kevin Bethel.  
23 And that when he came on with this whole issue  
24 of diversion, it has impacted the City and the

1 department immensely in a positive way and  
2 that, you know, we are taking probably 50 to 60  
3 percent fewer kids in custody, particularly  
4 from school-related issues. Just to give an  
5 example, one of the things he had realized in  
6 his analysis is that a lot of times, you know,  
7 you had some crime and safety people were  
8 intervening in fights and that kids were  
9 getting charged with felonies and other school  
10 offenses when it really wasn't necessary and  
11 intervening. And this is not an indictment of  
12 them, it's just a matter of how the process was  
13 going. But it's so important for these kids  
14 not to be in the system in the first place, as  
15 you all know. And that's a critical step. So  
16 we are very, very proud of that. We continued  
17 the work that he started because it has really  
18 yielded significant inroads and moved the ball  
19 forward for us.

20           As I said before, we don't want to  
21 put kids in the system unnecessarily. So  
22 that's something that we're just so very happy  
23 of. As you know, we're also always very  
24 intentional about the many community groups

1 that we deal with across the City. We have  
2 deputies. For example, it's important enough  
3 to have deputy commissioners assigned to  
4 different interest groups. We have one who is  
5 assigned to the Asian community. We have one  
6 who -- well, myself actually now, I kept the  
7 police chaplain program. And there are others  
8 that we deal with across the City. It's just  
9 so important for us to make these connections,  
10 to establish to these groups how important it  
11 is for us to cultivate relationships across the  
12 City. We have even, him and I, meaning Deputy  
13 Bethel or Kevin Bethel, we established a young  
14 millennial group last year. One of the things  
15 that I'm trying to be very intentional about is  
16 connecting with that demographic that we don't  
17 typically have. You have been to more  
18 community meetings, Councilman, and folks than  
19 you can ever count. And typically, that  
20 demographic of folks in their 20s and 30s,  
21 particularly young men, are not there. And  
22 it's not because they're not productive members  
23 of society, they may be doing other things, but  
24 we have to be intentional about connecting with

1    them in order to really do what we're all  
2    trying to do.  Because it can't just be about  
3    police community relations as it relates to  
4    people in their 40s, 50s, 60s, 70s.  We have to  
5    have people who are younger and that's what's  
6    critical.  So we're working very hard to deal  
7    with that.

8                    We have somebody who also deals  
9    with the LGBTQ community because, you know, one  
10   thing I am very careful about and I am  
11   intentional about when I hear either someone  
12   from the press or someone who's an elected  
13   official who makes community singular, I  
14   quickly say no, it should have an "S" behind it  
15   because all of our communities are plural in  
16   nature.  And I'm going to be very honest about  
17   something else.  We have gotten to the point  
18   where in police community relations we say  
19   community and that seems to be synonymous with  
20   color.  So the reality of it is even within the  
21   scope of communities of color, there's more  
22   than one within Philadelphia.  So not every  
23   community feels the same way about police, not  
24   every district feels the same way.  And so

1 you've got to be aware of all of those things.  
2 So it's communities with an "S" and not be so  
3 drawn into saying the community feels this way  
4 or the community feels that way because that's  
5 not a fair assessment of how anyone feels.  
6 Can't make those assumptions.

7           Explorers program. Again, you  
8 know, we decentralized that and that is helping  
9 us. I mean, it was already a very diverse  
10 program, but obviously from a logistical  
11 standpoint it was difficult for young kids to  
12 get all the way to the Northeast and it's  
13 probably even more difficult now. So having it  
14 out in the districts, in the divisions, we're  
15 getting some significant participation in that.  
16 Obviously some districts are better than  
17 others. But these are things that are helping  
18 us making those connections with people.  
19 Opening up more PAL centers. You have all  
20 heard those PAL testimonials from some of those  
21 PAL kids. Phenomenal in what they've done.  
22 And it doesn't matter what the race of the  
23 police officer is. I mean, when you hear these  
24 kids talk about the impact these PAL officers

1 have on them, it is absolutely amazing. And  
2 all this stuff trickles down. I mean, you may  
3 have even seen some of the things that have  
4 happened with police officers up in Northwest.  
5 There's a particular one who's up there getting  
6 out of his car all the time. And we have got  
7 people who do this that go unheralded in many  
8 instances. The news doesn't necessarily know  
9 about it. And, again, this transcends race.  
10 You know, we have black officers, white  
11 officers, males, females who are getting out  
12 there, really being intentional about trying to  
13 connect with communities, who really understand  
14 what that's all about and trying to make sure  
15 that our police officers in this climate  
16 recognize that just because an individual group  
17 or an individual takes issue with a police  
18 action across this nation or here, doesn't  
19 necessarily mean they're indicting the entire  
20 profession. And so we even have to be careful  
21 not to succumb to that.

22                   And so a lot of these things you  
23 got to stay on top of. Your messaging has to  
24 be very clear to the rank and file about what

1 you're trying to accomplish, why it's important  
2 to make these inroads, why it doesn't really  
3 make any sense to put a bunch of cases on  
4 people. You just saw this from the Democratic  
5 National Convention and thank you for those  
6 kudos. But largely, it had a lot to do with  
7 what Mayor Kenney had started with marijuana  
8 and making sure that we close that gap in  
9 disparity. And so by virtue of being able to  
10 issue these code violation notices, instead of  
11 putting people in the system with summaries.

12 I mean, we're able to first of all  
13 not clog up the system, which as it relates to  
14 the DNC helped us immensely. You may have  
15 heard me say that some of those protestors were  
16 in and out of our custody so quickly, their  
17 heads were spinning. They didn't realize what  
18 was happening. You know, they were written a  
19 citation, given a bottle of water and said have  
20 a nice day. So they were really pleasantly  
21 surprised about that. So we're also trying to  
22 make sure that we continue that effort as it  
23 relates to, you know, disparate treatment in  
24 the criminal justice system with things like

1 marijuana. The Mayor, myself have tried to  
2 explain to multiple people why, you know, it  
3 doesn't pay us to put a summary violation on  
4 somebody when you have two different  
5 violations, one for up to 30 grams of marijuana  
6 and another person potentially charged with an  
7 open alcohol container. It makes no sense.  
8 And so by virtue of him being successful with  
9 you folks and council and pushing that forward,  
10 it would -- the timing was impeccable for the  
11 convention and I keep coming back to that. But  
12 it's just all those things dovetail into one  
13 another and making sure that everybody  
14 understands. Look, I'm very pragmatic. I  
15 understand that even within the rank and file,  
16 there's some people you got to kind of drag  
17 along a little bit and they may not quite get  
18 it at first. But I think when they understand  
19 that there's a benefit to them and that there's  
20 no benefit to just putting a bunch of people in  
21 the system unnecessarily, then I think we'll  
22 move this ball forward.

23                   The other thing that has happened  
24 and that is taking -- been under a lot of

1 scrutiny, has been the reduction or the removal  
2 of the 60 credits. Let me say this to you.  
3 There are a lot of pundits out there who would  
4 suggest that now the worst thing in the world  
5 has happened. A lot of folks have bemoaned the  
6 notion that cultural awareness and a whole  
7 bunch of other things will go by the wayside.  
8 The first thing that I say to that is if you  
9 want to be culturally aware, you have to be  
10 intentional about being culturally aware. If  
11 you just decide just because you have a PhD or  
12 you think because you have a PhD you're going  
13 to automatically -- you're going to be  
14 culturally aware, you're naive. If you're  
15 interested in getting to know another culture,  
16 then you have to be intentional about learning  
17 that culture. So 60 credits does not  
18 necessarily get that.

19 In addition to which, I think there  
20 are people who did not understand that just  
21 because we had the 60 credit requirement didn't  
22 mean that everybody who came in had 60 credits.  
23 You had people coming in with the military, you  
24 had people coming in through the Explorers. So

1 two-thirds of the people who were coming in  
2 probably didn't even have the 60 credits. Let  
3 me just clear that up. In addition to which, I  
4 don't have the luxury like some of the experts  
5 and the pundits of talking about this as they  
6 can sit on the sideline and talk about 60  
7 credits while my department is shrinking and  
8 we're losing diversity. Let me elaborate on  
9 that a little bit. For me it's more about even  
10 inclusion. It's more about who I'm not  
11 getting, than who I am getting. I don't take  
12 any issue with having a number of Caucasian  
13 officers. I got some of the best cops. I got  
14 -- and the biggest hearts that I got come from  
15 some of these white males and whatever. So to  
16 make that indictment, I don't allow that to  
17 happen. But what I am losing, I'm losing  
18 females. I'm losing young black men. I'm  
19 losing people who reflect the demographic of  
20 the City. So when people sit on the sideline  
21 and they talk about well, why couldn't you do  
22 this, why couldn't you could that. All those  
23 things we have tried ten times over.  
24 Meanwhile, our department still isn't growing.

1 And meanwhile, the demographics are going in  
2 the wrong way. And so we need to be very  
3 careful that we see what the bigger picture is.

4           You are seated -- again, I  
5 reference him again. The guy sitting next to  
6 you has a master's degree. He's gone to a  
7 number of programs. And under that 60 credit  
8 requirement would not have been in this police  
9 department. He would have never been here.

10 Okay. Just like my captain in the 18th  
11 District who's a single mother who now also has  
12 a master's degree. She came on this job with  
13 no credits. But she got educated like many of  
14 the police officers do. Both of them have  
15 tremendous hearts. They're hard working people  
16 just like many of the police officers are, not  
17 the least of which we cannot forget that this  
18 is a City that has one of the highest poverty  
19 rates of the top ten cities in the country.

20 And police, fire, prisons and a few others are  
21 a gateway to the middle class and so why should  
22 we lose sight of that. To me it's ludicrous  
23 that people would take their own residents and  
24 decide to exclude them for the sake of some

1 arbitrary requirement -- I mean, I'm a  
2 proponent of education. So anyone who thinks  
3 that is mistaken. But also I'm a proponent of  
4 public safety and providing a level of service  
5 to the people who live, work and visit here  
6 that they deserve. And I cannot afford to sit  
7 back and debate it because it sounds good to  
8 people for whatever reason they think it sounds  
9 good.

10           So, in a nutshell, we will continue  
11 to be progressive in this police department.  
12 We will continue to move the ball forward with  
13 regard to establishing and cultivating  
14 relationships with communities. Ones that we  
15 already have good relationships with we will  
16 continue to do that and ones where we struggle  
17 and we acknowledge that we struggle, we will  
18 continue to move that ball forward. Because  
19 you will not get this done by yourself. That's  
20 just the bottom line. Whether it's police  
21 community relations, whether it deals with  
22 crime in communities. The only way you'll find  
23 a modicum of success or success in general is  
24 if you collaborate and work together.

1                   That actually concludes my  
2 testimony. I will answer any questions that  
3 you may have at this point.

4                   MR. EL-SHABAZZ: Prior to having  
5 the Commissioner answer any questions, I think  
6 that with respect to the way that we're dealing  
7 with this particular issue, that it may be good  
8 for me to just go through my presentation as  
9 quickly as possible and for the Commissioner  
10 and I to address questions.

11                  COUNCILMAN JONES: I want to  
12 recognize my colleague, Councilman Green, who  
13 has joined us this day. He's not on the beach.  
14 He's here making sure public policy happens.

15                  I also want to recognize the Chair  
16 of the Bar, Mr. Alfano, who's here as well.  
17 And we have the newly minted -- I got to get  
18 the title right -- First Assistant District  
19 Attorney, not new to this committee, George  
20 Mosee, who has also joined us as well. So with  
21 that, could you please continue.

22                  MR. EL-SHABAZZ: Absolutely. I  
23 think that it was important for the -- first of  
24 all, let me say this as a disclaimer. This is

1 a friend of mine. I have known the  
2 Commissioner since I have come to Philadelphia  
3 and I knew him prior to being the Commissioner.  
4 I knew the type of individual he was prior to  
5 that, and I think that him being elevated to  
6 Commissioner in one of the fifth largest cities  
7 in the country, I think, is a tremendous,  
8 tremendous accomplishment. And so far I would  
9 have to say that my friend is doing well. And  
10 he also knows that I am the type of individual,  
11 if I thought he wasn't, I would say that as  
12 well. But I think that you're doing a  
13 tremendous job, that you should be applauded.  
14 That the men and women that you serve and that  
15 serve you and serve the City should be  
16 applauded, because the DNC was an arduous task  
17 for so many different reasons.

18 That being said, I want to kind of  
19 put in context that comments that I'm going to  
20 make and I think that some of the comments that  
21 I will make are going to actually mirror some  
22 of the things that the Commissioner has already  
23 addressed. And he addressed some things that  
24 dealt with youth, dealing with our youth,

1 dealing with the young, dealing with the young  
2 interaction with law enforcement. And when I  
3 was young many, many, many, many moons ago -- I  
4 grew up, as most people know, in the  
5 Bedford-Stuyvesant section of Brooklyn, New  
6 York in Greenwood Housing Projects. And I  
7 bring that up because there was a certain  
8 element that existed in the projects, but there  
9 were also law enforcement officers that existed  
10 in the projects. And one of the things that  
11 interacted or allowed us to interact with law  
12 enforcement or allowed us to coexist with law  
13 enforcement in the projects was that actual  
14 interaction.

15           During that time there was gangs  
16 and I think there were a lot of gangs in  
17 Philadelphia during that, and I'm not going to  
18 tell you what that time is because I don't want  
19 to date myself too much. But I am going to say  
20 that the only way to deal with that type of  
21 aggressive climate was relationships between  
22 law enforcement and towards the people that  
23 live in the housing project. I'm sorry, it's  
24 public housing now. It was a project back

1 then. One of the things that I -- that comes  
2 to mind is an officer by the name of Officer  
3 Johnson. And I say this all the time whenever  
4 I speak on this particular issue. This was an  
5 officer that was known by all of us. And, in  
6 fact, on hot days that we played basketball if  
7 we were thirsty all of a sudden he would come  
8 with -- it wasn't any water in bottles then, we  
9 would have regular water. But he would come  
10 with juice for other individuals, for everyone.  
11 If, in fact, we had a tournament in the  
12 projects, a basketball tournament, and there  
13 was a champion that was crowned that particular  
14 day, it was Officer John and other officers  
15 that got together and may have had a pizza  
16 party at that particular location. What did  
17 that do? Well, what it did was it endeared us  
18 to Officer John. The same individual that if  
19 he seen us hanging out in the hallway and we  
20 knew we weren't supposed to be there, rather  
21 than wait for Officer John to come there, we  
22 would disburse and leave that particular area.  
23 If, in fact, someone was hurt and Officer John  
24 seen he was hurt, Officer John was one of those

1 individuals that came to their aid and then  
2 spoke to their parents. But he also was that  
3 individual that if he seen you doing something  
4 that was inappropriate, he saw your behavior  
5 was a behavior that was disrespectful to the  
6 elderly, for example, or if he seen you being a  
7 bad influence on someone younger than you, he  
8 would grab you by your shirt, he would slap you  
9 on the back of your head and he would take you  
10 upstairs to your parents who would then slap  
11 you in the back of your head or on the other  
12 parts of your body. So this was an individual  
13 that was respected, that was loved and that had  
14 a relationship with the people that were in  
15 that particular area that he patrolled.

16           And it wasn't just a relationship  
17 with older individuals or older citizens, it  
18 wasn't a relationship with the hard-working  
19 citizens, it wasn't a relationship with just  
20 the males or the females, but it was a  
21 relationship with the young. And that  
22 relationship with the young allowed him to  
23 either mentor us, to handle us, to deal with us  
24 and, yes, to arrest those individuals that he

1 needed to arrest. And also, did deal with the  
2 hesitancy of people to come forward if, in  
3 fact, they observed something that was illegal.  
4 Why? Because they trusted him. They know that  
5 Officer John would hit you on the back of the  
6 head, but he also would prevent anyone else  
7 from hitting you in the back of the head. And  
8 I would also submit that if Officer John seen  
9 another doing something incorrectly or doing  
10 something that was incorrect that was overly  
11 aggressive, that he may have viewed outside the  
12 realm of their job, he would be able to speak  
13 up or he would speak up as a result of that.  
14 Now what does that mean? That means that that  
15 trust that existed back then, that I would  
16 submit was a different climate but a just as  
17 volatile climate as the one that exists today,  
18 was a relationship that was developed as a  
19 result of communication between individuals.  
20 People being treated as people. Not anything  
21 else. As individuals. Not anything else.  
22 Through conversation, through hard work and  
23 sometimes through discipline. And sometimes  
24 through the communication with the parent. I

1 say that because I wanted to put in context one  
2 of the things that is the elephant in the room  
3 so many times, but is something that we have to  
4 deal with because it's real and it's legitimate  
5 and that is this movement, if you will, called  
6 Black Lives Matter.

7 Now, let's start by expelling any  
8 myths. When an individual says black lives  
9 mater, they're not saying that nobody else's  
10 life matters. They're just saying that we are  
11 at a point or they feel that they're at a point  
12 and I would submit, we're at a point where it  
13 appears based upon things that are happening in  
14 the community, that black lives don't have the  
15 same value as maybe other lives. That may be  
16 true or it may be something that is overstated.  
17 But one of the things that we have to realize  
18 and we have to recognize that we have problems  
19 that exist between law enforcement and our  
20 young community, more or less. Well, Black  
21 Lives Matter is borne out of that frustration.  
22 It's borne out of that fear. It's borne out of  
23 that misunderstanding of the relationship that  
24 we should share with our law enforcement. Why

1 should we share that relationship? Because  
2 it's part of the community. There's nobody  
3 that wants to live where there's crime ravaging  
4 their community. Nobody wants to live where  
5 their mother has to walk past someone who is  
6 selling drugs on the corner. Nobody wants to  
7 live at a place where they park their car that  
8 they're paying for through that hard car note  
9 to get them from point "A" to point "B" that  
10 someone has vandalized or stole that car. You  
11 can't find anybody, I submit to you, that would  
12 indicate that it's okay, I'll live in that  
13 community and I'll defend the people that do  
14 those particular type of crimes. It doesn't  
15 exist that way. However, in order for  
16 individuals to feel protected from those  
17 individuals that are protected or charged with  
18 putting their lives on the line to protect that  
19 community, they have to feel that their life  
20 has some value too. And that is a reaction,  
21 what we're seeing now is a reaction to people  
22 not feeling that they're being heard. It's a  
23 reaction to people feeling like they're  
24 unprotected, like they're unrecognized, that

1 their life doesn't value or doesn't have any  
2 value to it. And we have to begin to address  
3 through communication and through efforts their  
4 concerns, our concerns because it's real. The  
5 numbers are real. The numbers bear that out.

6 Now, in saying all this, one of the  
7 things I have to say is that in the City and  
8 County of Philadelphia, I have been involved  
9 and engaged in some revolutionary and  
10 progressive measures in order to attempt to  
11 deal with those situations that are related to  
12 police-related shootings. In fact, it was  
13 Commissioner Ross who was then Deputy  
14 Commissioner that reached out to me to  
15 participate in one or more of those particular  
16 functions that were one of a kind. You can't  
17 find another city that was doing it. They  
18 weren't engaging community people or community  
19 leaders or lawyers to review things, to review  
20 information so that we can make a determination  
21 whether or not something was -- it's not our  
22 determination, but we definitely had some input  
23 whether or not something was criminal or not.  
24 That's a progressive measure and it's an

1 important measure. It was a measure that was  
2 handled behind closed doors though. Nobody  
3 came out and said this is what's being done.  
4 No one came out and said we met with all these  
5 community leaders. You never heard it. You  
6 didn't see it. And it was important that you  
7 didn't hear it and see it because it wasn't  
8 done as a political stunt. It was done to deal  
9 with some issues. But you see people prior to  
10 having any information, prior to the shot being  
11 fired just two hours later having a press  
12 conference talking about suing with no  
13 information. Now, I get it. I don't have a  
14 problem. I get it. There are times where  
15 civil rights are violated and they should be  
16 dealt with accordingly, but we learn in law  
17 school, I submit that one of the things we do  
18 is we do things based upon evidence and not  
19 upon emotion. Based upon facts and not based  
20 upon fiction. Based upon what we see, what we  
21 hear, what we read and those things that are  
22 derivative from that called scientific  
23 evidence. If you don't have those things, you  
24 can't have a press conference right after the

1 shooting saying the shooting was good or bad.  
2 You can't. So we have to deal with that and  
3 those are some of the things that concern the  
4 community with respect to Black Lives Matter.  
5 But we have to recognize it's a legitimate  
6 movement. It's a legitimate frustration. It's  
7 legitimate lack of communication between law  
8 enforcement and the African American community.  
9 It really is. And if we try to ignore it and  
10 we try to push it aside or sweep it under the  
11 rug like it doesn't or it doesn't have a  
12 legitimate reason to exist, then what we're  
13 doing is exacerbating the problem.

14 Now, does that mean that if we are  
15 allowing people now to use social media to say  
16 all kinds of things about law enforcement? I  
17 submit to you it does not. But it doesn't  
18 allow law enforcement to use social media to  
19 fight back. Doesn't mean that now whenever you  
20 see a police officer and you are involved in a  
21 Black Lives Matter movement, you should be  
22 disrespectful to that officer. No, it does  
23 not. But it also doesn't mean that an officer  
24 that sees you with a Black Lives Matter T-shirt

1 on should also treat you differently. What we  
2 have to do is we got to get past what I submit  
3 to you is an us-against-them mentality.  
4 There's only justice, folks, and injustice.  
5 There's no us against them. And whenever we  
6 get into a situation where it's us against  
7 them, we're going to have a problem.

8 I mentioned social media and this  
9 is the second of three areas that I wanted to  
10 speak of and this will be just as quick. We  
11 can't ignore social media. Social media is the  
12 avenue by which young folks communicate. It  
13 was developed for the purpose of developing  
14 networks. Networks all over the country, and I  
15 submit to you all over the world. If it's used  
16 properly, it is a beautiful thing. But if it's  
17 used improperly and irresponsible, it incites  
18 people, it aggravates people. It engenders  
19 hate. It engenders this anger -- or this anger  
20 and this distrust among individuals. So we  
21 have to be -- we have -- in order to fight  
22 social media, because you're not going to shut  
23 it down, you're not shutting down Facebook,  
24 you're not shutting down Instagram, you're not

1 shutting down Twitter. And I don't give a damn  
2 how many times -- I'm sorry I said damn, but  
3 that's a condition that really isn't like a  
4 curse -- I don't care how many times you  
5 threaten to arrest someone who videotapes  
6 something, it's going to be videotaped. So  
7 let's start to use it for positive things and  
8 not for negative things. To bring people  
9 together, instead of tear people apart. So in  
10 order to do that, we have to attack on the  
11 social media front all negative misinformation,  
12 people trying to agitate aggressive behavior  
13 through putting out what the real facts are. I  
14 think it's called transparency. And we have a  
15 responsibility as law enforcement,  
16 responsibility as the District Attorney's  
17 office, responsibility as attorneys that  
18 inform, that actually take an oath, that  
19 they're going to deal with the Constitution to  
20 deal with that transparency. So let's be real.  
21 I don't have any problem with someone making  
22 their money defending civil rights. I don't  
23 have a problem with that, nor those individuals  
24 that make their money trying to sue other

1 individuals despite knowing the facts, putting  
2 their name on the line. I don't have a problem  
3 with that. The problem I have is, have the  
4 facts first. Allow individuals to do their job  
5 first. Let's have some transparency first.  
6 Let's have some communication first. We cannot  
7 begin to investigate a problem and not have  
8 communication with the people for which we're  
9 protecting or the people that are accused of  
10 being investigated. What does that mean?  
11 Well, we can't refer to the suspect as anything  
12 other than their name, Mr. This or Mrs. Such  
13 and Such. Because we don't disparage anyone  
14 else if they're not a so-called suspect in  
15 terms of their name. We want to begin to  
16 continue to -- and I don't know who to put this  
17 blame on, but since I don't, I'm just going to  
18 make the statement in general. We can't begin  
19 to -- if an individual, an African American  
20 young man or woman is killed through some  
21 police action, that the first thing the next  
22 day in the newspaper there is the criminal  
23 record of the individual that was killed. You  
24 know, he stole an ice pop in 1982, as if it was

1 shady. Nor should we applaud anybody who said  
2 that an attorney standing up for the family  
3 having a press conference an hour after the  
4 shooting talking about all the bad things that  
5 occurred, especially in light of the fact you  
6 weren't on that corner, at night, in that  
7 lighting when that occurred. We have to wait  
8 folks. So in order to do that, both sides have  
9 to give and both sides have to take.

10 I talked about problems. Now this  
11 is the last part. What are some of the  
12 solutions? One of the best things about  
13 Philadelphia and you would say the members of  
14 law enforcement community and members of the  
15 community, and I would submit to you some  
16 members of Black Lives Matter and some members  
17 of Philadelphia PD, and some members of the  
18 District Attorney's office are working together  
19 to try to end this type of us versus them  
20 mentality. What are they doing? Well, you  
21 have activities such as -- and First Assistant  
22 District Attorney Mr. Mosee knows well, that  
23 they have designed programs such as  
24 Lace Up/Speak Up events. Where individuals get

1 together -- the prosecutors get together and  
2 some enforcement get together with some of the  
3 youth in the community. And they decide they're  
4 going to do a walk or have a basketball game,  
5 but prior to that they have a conversation and  
6 the conversation is maybe about bullying, the  
7 conversation may be about relationships between  
8 police officer -- how do you see a police  
9 officer, young man or young lady, and they give  
10 their opinion. And then you ask the officer  
11 well, what is your opinion in terms of how they  
12 see you and then that officer can give his  
13 opinion. If these individuals are from that  
14 district, if it's happening in Mt. Airy and it's  
15 people from the 35th District and from the 14th  
16 District meeting with this particular community,  
17 those individuals will get to know each other  
18 just like I got to know Officer John. And if  
19 they get to know each other and get to develop a  
20 relationship, then we're not going to talk about  
21 speak up. They are going to speak up. We don't  
22 have to talk about they don't trust us. They  
23 are going to trust you. But it's based upon  
24 communication and knowing, and one of the ways

1 to attack diversity is if you have an officer  
2 that's working in a particular area that he's  
3 never lived or she never lived and you'll have  
4 that or they're not even familiar with the  
5 people that lived in that particular area,  
6 there's one way to do it, talk to them. Have  
7 events with them. Try to communicate with them.  
8 Smile at them. If you do things like that, you  
9 will engender participation. And I will submit  
10 to you the District Attorney's office and, as I  
11 indicated we have our brother here, George  
12 Mosee, who was involved in this initiative to  
13 the Lace Up/Speak Up event. Also, there are  
14 ongoing bullying seminars. Again, law  
15 enforcement, District Attorney's office dealing  
16 with bullying seminars. Now, you may say what  
17 the hell does a bullying seminar have to do with  
18 anything else. Folks, let me say this to you.  
19 If you're saying to me that there's a member of  
20 the community who witnessed a killing, witnessed  
21 a killing, but that individual really don't want  
22 to come forward, why is it do you think he  
23 doesn't want to come forward or she doesn't want  
24 to come forward? If you don't think it's based

1 upon bullying which is based upon intimidation,  
2 then what the hell is it based upon? At the end  
3 of the day, those are the things that are  
4 preventing things from happening and making  
5 communities safe. But we can't address that  
6 unless we begin to address the bullying and the  
7 intimidation.

8                   And I remember saying to my friend,  
9 I said, you know, one of the things that  
10 affects the black community, the African  
11 American community, the Hispanic community, the  
12 poor, indigenous people community is that  
13 there's a feeling that you want me to speak up  
14 when it comes to an individual being shot on  
15 the corner, but will you speak up when it comes  
16 to an officer being overly aggressive? Will  
17 you make a statement then? Will you say that  
18 is wrong? Or do you remain silent? Now, mind  
19 you, there are a lot of officers in  
20 Philadelphia specifically, but I would submit  
21 all over the country, that are very good  
22 people. They put their lives on the line, they  
23 try to come home every day. But that same  
24 feeling that their family has, that's the

1 feeling that an African American mother has  
2 when her son walks out that door. Is he going  
3 to make it home today? And it's not just from  
4 the people that are in the community that are  
5 committing crimes and want to do things wrong  
6 and shooting people. It's not just them. But  
7 what would his interaction be when he's  
8 confronting a police officer, or a police  
9 officer is confront him, or he just has a mere  
10 encounter. What is that interaction? That  
11 interaction can only improve through  
12 individuals getting together. That is law  
13 enforcement and, in fact, members of the  
14 community. I happen to know after speaking  
15 with the district attorney that on, I believe  
16 August 11th, there's going to be a community  
17 walk between the community and law enforcement,  
18 and the purpose of that is to engage, again,  
19 the community with law enforcement to kind of  
20 marry them together. I do also know that the  
21 district attorney and the district attorney's  
22 office is now working on what is known as an  
23 initiative to get young folk and law  
24 enforcement together.

1                   For example, in every district just  
2 like you have PAL, if there was a call made out  
3 for individual officers to get involved in  
4 coaching basketball, coaching touch football,  
5 they would line up. I know that to be a fact  
6 because I know many police officers. Some of  
7 them are family members and they don't have any  
8 problem with coaching. Now imagine if they  
9 took people from within their radius of their  
10 coverage. They get a couple of people from the  
11 block and they begin to put together this  
12 basketball team. And then the 35th District  
13 has a basketball team. And the 25th District  
14 has a basketball team and there's a basketball  
15 league set up. Now this basketball team is  
16 made up of police officers and community youth.  
17 They are working together. They are talking  
18 together. They are mentoring -- well, the  
19 youth are being mentored. They have some  
20 positive interaction. They're not on the  
21 street. They're not on the corner. These are  
22 people that they're dealing with daily as they  
23 get them ready for touch football or for  
24 basketball. And, by the way, young ladies and

1 young men can play baseball -- basketball and  
2 touch football. And members of Council, we're  
3 not talking about a lot of people, but I'm  
4 going to have to get some money from somebody  
5 for people who are going to be doing these  
6 things. So what happens is if you do that, if  
7 you get that together, you will begin to have a  
8 connection with officers that patrol that area  
9 and the youth. And if you wrap up everything  
10 that I have said thus far, and you put it in a  
11 nice bow with everything that has been said by  
12 the Police Commissioner Ross, you will see that  
13 all we're asking is for communication and  
14 engagement. That communication and engagement  
15 needs some money and it needs some volunteers  
16 and it needs open minds and it needs people  
17 that understand it's not us against them, but  
18 it's us, it's we and it's just against unjust.  
19 You're not ever going to have, ever going to  
20 have, ever going to have youth dealing with law  
21 enforcement unless the youth can trust them.  
22 Trust only comes when you see a crime, you  
23 report the crime. Not just as a citizen, but  
24 also as an officer. I hope I didn't take too

1 much time.

2                   COUNCILMAN JONES: No. Just so  
3 that you know to the both of you, we had a  
4 telephone conference call of the chairs and we  
5 agree that the two of you were the best people  
6 to come forth and kind of give an assessment of  
7 where we are and what we need as a City. The  
8 topic today is bail, but we felt it was, with  
9 the occurrences in Missouri and Florida and  
10 other places, important to say that we're not  
11 Ferguson, but we're not finished. That we  
12 didn't wait around. Before Ferguson we started  
13 these processes and the Justice Department's  
14 recommendations you didn't wait -- you didn't  
15 wait for this committee to find these findings  
16 before you start implementing some of the good  
17 things that you both talked about. Officer  
18 Santiago in the 19th District routinely  
19 referees our basketball league, and the reason  
20 that's important -- it may not seem like a big  
21 deal, but it speaks to your point, there's a  
22 lot of kids on that basketball team. Some of  
23 them are good kids. Some of them have bad  
24 days. And some of them really need a lot of

1 help. But Officer Santiago doesn't meet them  
2 at the first occurrence of a bad situation. He  
3 meets them, knows the individuals, can say he's  
4 acting out of character or this individual  
5 doing this negative activity could be predicted  
6 because of his methods on the court and off the  
7 court. His demeanor on the court -- so it's  
8 not his first time interacting with that young  
9 person. So those recommendations -- and I want  
10 to compliment you once again and thank you for  
11 taking the time to testify. It was good to see  
12 on national T.V., them talk about our police  
13 department, our City being one of the most  
14 engaging cities to protestors. And this didn't  
15 just start with the DNC, it started even before  
16 Occupy. We trailblazed on that. So it's good  
17 to see Philadelphia recognized for some of its  
18 trailblazing activities. Any time the ACLU,  
19 you said, compliments the police department on  
20 this conduct, that's a heck of a thing. So  
21 thank you for your comments. We're going to  
22 quickly -- unless any of the members have  
23 something to say, we're going to then transform  
24 into the bail hearing, which is the purpose of

1 this hearing.

2 MR. ROJAS: The question is  
3 connected to bail. First of all, Commissioner,  
4 you did a fantastic job.

5 COMMISSIONER ROSS: Thank you.

6 MR. ROJAS: I was here during the  
7 RNC and there was a lot of overtime that my  
8 corrections officers and social workers made as  
9 a result of all of the arrests and the ensuing  
10 lawsuits that occurred after the RNC. I think  
11 some of the lawsuits are still prevalent. In  
12 terms of bail though, a lot of those persons  
13 that were arrested stayed around a very long  
14 time because they couldn't make bail and they  
15 stayed in our system costing us a daily -- and  
16 a lot of people don't look at the economics of  
17 what you did with the DNC. You saved the City  
18 a lot of money and you kept us from a lot of  
19 lawsuits. And I think that -- I appreciate  
20 that. I think this entire committee  
21 appreciates that and I hope that you continue  
22 to do the kind of work that you did during the  
23 DNC in your regular work every day.

24 COMMISSIONER ROSS: Thank you so

1 much. Appreciate that.

2 COUNCILMAN JONES: Thank you for  
3 your testimony. We appreciate your efforts on  
4 a daily basis.

5 COMMISSIONER ROSS: Thank you.

6 COUNCILMAN JONES: Will the clerk  
7 please read the first -- the next panel to  
8 testify on this. It's my understand we're  
9 going with affected community members of the  
10 bail process first.

11 THE CLERK: The next panel members  
12 will be Joshua Glenn, the written testimony for  
13 Romeeka Williams and Reuben Jones.

14 COUNCILMAN JONES: Thank you, Ms.  
15 Williams.

16 Will the people to testify come to  
17 the testimony table. And you might want to  
18 read the next panel to testify so they can  
19 position themselves beyond the rail.

20 THE CLERK: The panel after that  
21 will be Ms. Julie Wertheimer, who is a member  
22 of the committee.

23 COUNCILMAN JONES: She's already  
24 positioned. Okay. Thank you. Thank you for

1 your patience. Good afternoon.

2 MR. GLENN: Thank you for having  
3 us.

4 COUNCILMAN JONES: State your name  
5 for the record. The stenographer will take  
6 your testimony.

7 MR. GLENN: Before I start, so  
8 Romeeka couldn't make it in, so we're going to  
9 have someone who is going to read her testimony  
10 for her.

11 Hello. My name Joshua Glenn. I  
12 grew up in a poor and low-income family, like a  
13 lot of the people that live in urban  
14 neighborhoods in Philadelphia. I started  
15 selling drugs at the age of 13 to help my mom  
16 pay bills, and at the age of 16 I got arrested  
17 for an aggravated assault charge that I didn't  
18 commitment. My bail for the aggravated assault  
19 was \$2,000, but because my family was poor they  
20 couldn't afford to pay it. So I sat in jail  
21 for 18 months because my family couldn't afford  
22 to pay my bail. The case was eventually  
23 dismissed due to lack of evidence. I wasn't  
24 able to get my high school diploma because they

1 moved me to the adult side. After I was  
2 released for the aggravated assault, the police  
3 in my neighborhood started harassing me and my  
4 friends and saying that we sell drugs and that  
5 we're in a gang. They would stop and frisk us  
6 every time they seen us on numerous occasions  
7 daily. During that time, I was an organizer at  
8 the Youth Art & Self-Empowerment Project  
9 changing my life and doing positive work. Then  
10 a year later I was locked up for another  
11 aggravated assault because the cops made an  
12 agreement with the witness in my case. They  
13 told him to testify that me and my  
14 co-defendants shot him so that he could get his  
15 case dismissed. My bail was \$10,000 for that  
16 case. Thankfully I was able to raise the money  
17 from friends and supporters so that I could  
18 fight the case from the community and keep  
19 doing positive work. I fought the aggravated  
20 assault for five years. On the day of my  
21 trial, my lawyer tried to convince me to take a  
22 deal at the last minute. I told him no -- I  
23 told him no because I didn't commit the crime.  
24 He told me if I didn't take the deal we would

1 lose the case, so I fired him and got a new  
2 lawyer. When my new lawyer got on the case, he  
3 asked the judge for a few weeks to prepare for  
4 trial. The judge offered me another plea deal  
5 and when I rejected it, he raised my bail  
6 \$5,000 and locked me up again simply because my  
7 lawyer had asked for more time to prepare. The  
8 only reason I was able to afford to get out was  
9 because I had support from members from YASP  
10 and they helped me raise the money for my bail.

11 In my life, I have seen the DA and  
12 the judges use bail as a tool to lock many  
13 people up for long periods of time so that they  
14 can become desperate enough to take plea deals.  
15 After five years of fighting and having to pay  
16 my bail twice on the same case, I was found not  
17 guilty of all charges. When I went to trial my  
18 co-defendant on the second case wasn't so  
19 lucky. Due to a lack of resources and a bad  
20 lawyer, he was convinced to take a plea deal  
21 even though he didn't do it either. He  
22 received two-and-a-half to 15 years upstate for  
23 the same case that I was found not guilty for,  
24 and I know for a fact he didn't commit. We

1 need to end cash bail and come up with programs  
2 that help formerly incarcerated people get  
3 education and think employment. Any cash bail  
4 would reduce the prison population and stop  
5 ripping families apart. Thank you.

6 COUNCILMAN JONES: Thank you for  
7 your testimony. If it's okay with the Panel, I  
8 would like the two panelists to testify first  
9 and then we'll engage them in questions. Is  
10 that all right?

11 MR. GLENN: So I'm going to go to  
12 Romeeka so that she can say and then --

13 MS. TALARICO: Can I take a picture  
14 really quick? I'm supposed to do a picture for  
15 our organization.

16 COUNCILMAN JONES: Social media.

17 MS. TALARICO: Thank you.

18 COUNCILMAN JONES: Bring the mic  
19 closer to you. State your name for the record.

20 MS. TALARICO: My name is Lauren  
21 Talarico. I'm going to be speaking on behalf  
22 of Romeeka.

23 Hi. My name is Romeeka and I work  
24 with the Youth Art & Self-Empowerment project

1 and we work with youth who are tried as adults  
2 and held in adult jails each and every  
3 Saturday. We do art, poetry, music workshop  
4 with the young people held in adult jails up on  
5 Philadelphia's State Road. We visit RCF for  
6 the young women and PICC for the young men. We  
7 are also currently trying to Repeal Act 33, a  
8 1995 amendment to the Pennsylvania Juvenile Act  
9 that directly sends our youth to adult prisons.  
10 Act 33 was passed in 1995 and gave prosecutors  
11 the power to start youth off in adult court and  
12 put all the pressure on the public defenders to  
13 try and fight to get them back down to juvenile  
14 court. Before Act 33, young people could be  
15 automatically tried as adults in Pennsylvania  
16 for murder charges. Now hundreds of young  
17 people 15 and older are sent directly into  
18 adult jails and prisons every year. This  
19 passage of Act 33 in Pennsylvania was part of  
20 the national Tough on Crime movement in the mid  
21 1990s. Between 1994 and 1997, Congress  
22 introduced numerous pieces of legislation that  
23 encouraged harsher penalties for punishment for  
24 young people, broader measures for trying young

1 people as adults and promised funds to states  
2 that adopt policies that further criminalize  
3 young people and push them into the adult  
4 system. Almost every state followed this trend  
5 by enacting new criminal codes that would allow  
6 for young people to face harsher penalties in  
7 the criminal justice system. This legislation  
8 came on the heels of racist media hype about  
9 the coming wave of youth super predators and  
10 high-profile cases such as the Central Park  
11 jogger case. These so-called youth super  
12 predators never arrived and the five young  
13 people convicted in attacking the woman in  
14 Central Park were later proven innocent and  
15 released, but the damage was already done and  
16 continues to be done every day to young people  
17 tried and incarcerated as adults in  
18 Philadelphia and across the country.

19 Over our 10 years of workshops with  
20 young people in Philadelphia's adult jails,  
21 YASP has worked with numerous youth from  
22 different countries who came to the U.S. when  
23 they were five or six years old and don't know  
24 any other country but the U.S. Unlike in the

1 juvenile system when young people who do not  
2 have full U.S. citizenship are tried as adults,  
3 they can be deported even after they paid their  
4 debt to society. They are punished twice,  
5 serving their prison sentence and then getting  
6 sent to a country they haven't seen in years  
7 and have no family in or even know the  
8 language. Right now we are supporting one of  
9 our members, Fran, who is from Liberia and is  
10 currently challenging deportation proceedings.  
11 Fran came to the U.S. from Liberia when he was  
12 five years old, a refugee from the country's  
13 civil war. When he was 15, Fran was arrested  
14 and tried as an adult under Act 33. He was  
15 convicted in adult court and sentenced to  
16 six-and-a-half to thirteen years upstate. Fran  
17 participated in YASP's workshop in the  
18 Philadelphia jails for a year and a half while  
19 he awaited trial and we have seen him transform  
20 his mindset while he's been incarcerated. Fran  
21 has so much to offer our organization and this  
22 City and we think it would be a huge loss for  
23 all of us if he's deported to a country he  
24 barely knows. Being held in an adult jail

1 already prevents youth from meeting their basic  
2 needs like education and rehabilitation to get  
3 them on the right track. The criminal justice  
4 system is only focused on punishment and not  
5 designed for rehabilitation. I was one of  
6 those young people who was arrested and charged  
7 as an adult and it was hard for a young woman  
8 to experience that type of trauma, especially  
9 after what I had already experienced in my  
10 life. Being held there is just teaching youth  
11 to be even more experienced in crime than they  
12 already are. Youth deserve a second chance and  
13 there are studies outstanding that their minds  
14 are not fully developed until their mid-20s.  
15 Sentencing youths as adults is not healthy and  
16 targeting our communities shows that racism is  
17 still alive and it's up to us to make a stand.  
18 Separating families by sending young people  
19 into the adult system and deporting them is not  
20 only destroying homes and it's also not making  
21 the streets safer. We need to come up with a  
22 better solution than to ship our young people  
23 who pay their debt to society back to somewhere  
24 they have not been since a child. YASP urges

1 the City Council to take the lead for local  
2 communities around the country as it has many  
3 times in the past and pass a resolution in  
4 support of rolling back the 1996 immigration  
5 laws and ending the school to prison pipeline  
6 to deportation pipeline that these laws have  
7 created. Thank you for your time.

8 COUNCILMAN JONES: Thank you for  
9 your testimony. As a legislator, nonlawyer, it  
10 helps me to have these experts up here because  
11 as I related to particularly your issue, I  
12 could not hear from your testimony how it  
13 related to bail and then was kind enough -- a  
14 colleague was kind enough to show me why it  
15 kind of related and that was because juveniles  
16 don't have a bail system. They have the  
17 decision of the judge to decide to hold. And I  
18 understand you were an expert in this, Judge  
19 Lerner.

20 JUDGE LERNER: I had a lot of  
21 experience.

22 COUNCILMAN JONES: That makes you  
23 an expert, in my mind. You need to come up to  
24 my mic. But particularly -- so I want to put a

1 pin in your side of it. But to ask about -- so  
2 both of your situations, you were wrongfully  
3 accused and then put a high bail or bail that  
4 you could not -- the question I would have, did  
5 you have any priors?

6 MR. GLENN: So when I first --  
7 which one? The first or the second one?

8 COUNCILMAN JONES: Either/or.

9 MR. GLENN: No. Because I wasn't  
10 convicted of either one. I mean, I did -- I  
11 told you I was 13, I got locked up for selling  
12 drugs. So that's what I did get locked up for  
13 a couple of times. But then after that the  
14 cops started to target me because they knew me  
15 from my neighborhood after I got locked up for  
16 selling drugs. So then after that when I got  
17 locked up for attempted murder at 16, you know,  
18 they just targeted us 24/7. But I met this  
19 organization that I work for in the jails and I  
20 started doing the positive work and I would  
21 tell them like, look, I'm not selling drug no  
22 more. This is where I live at. I have to be  
23 around my family. This is my family out here  
24 that I'm around and they wasn't doing crime

1 either, most of the people that I hung with.  
2 So it was like they would target us for no  
3 reason and then they would use that and say we  
4 were in a gang and then after you know it, they  
5 just start locking us up for all types of stuff  
6 that we had nothing to do with.

7 COUNCILMAN JONES: So you spent 18  
8 months up on State Road?

9 MR. GLENN: 18 months.

10 COUNCILMAN JONES: And what was  
11 your bail?

12 MR. GLENN: \$2,000.

13 COUNCILMAN JONES: For \$2,000 bail,  
14 you spent 18 months.

15 MR. GLENN: And the guy would come  
16 -- he wouldn't show up, he would come. It was  
17 all bad. He didn't -- he said I didn't do it,  
18 but they still held me. And I eventually beat  
19 the case. But this is the weirdest part, on  
20 the day of my trial for the one when I was 16,  
21 my lawyer came in and said look, you have 18  
22 months in, you can get time served. We'll let  
23 you out today. Take the five years probation.  
24 You know, I been in there for 18 months, but me

1 being strong than most people, I said you know  
2 what, I'm not taking that. You know what I  
3 mean? I did 18 months. If you all give me  
4 five to 10, I'll just do the rest.

5 COUNCILMAN JONES: So was your bail  
6 \$20,000 or \$2,000?

7 MR. GLENN: \$2,000.

8 COUNCILMAN JONES: So you didn't  
9 have \$200?

10 MR. GLENN: No, 20 -- no, it was  
11 \$2,000.

12 COUNCILMAN JONES: It was a \$20,000  
13 bail? The amount due --

14 MR. GLENN: The percentage was  
15 \$2,000.

16 COUNCILMAN JONES: I needed that  
17 clarity for the record.

18 MR. GLENN: And, you know, like a  
19 lot of the other young people that have grown  
20 up in poor and low income communities, they  
21 don't have the money for the bail. And then  
22 once they're in there, they start to use that  
23 as leverage so that they can be desperate and  
24 then they try to get you to take deals. I have

1 seen this done -- I know you all know, but  
2 mostly 90 percent of the cases that go in front  
3 of court are plea deals, you know, and it's  
4 because they pressure you and they keep you in  
5 there so long. You know, any other young  
6 person would have took the deal. You know, if  
7 you was in there for 18 months. They said you  
8 can get out today, time served, five years  
9 probation. That's what people do and that's  
10 what's going on out here. And, you know, they  
11 keep going back out, they get a felony, they  
12 can't get a job, so then they go back in the  
13 streets, they get locked up again, then they go  
14 back in, then they come back out, then they go  
15 back in. And next thing you know, the system  
16 is packed.

17 COUNCILMAN JONES: Judge?

18 JUDGE LERNER: Well, it's a little  
19 difficult to respond to a particular set of  
20 facts delivered with only one side of the set  
21 of facts being heard. But I can say this based  
22 on 15 years experience as the judge presiding  
23 in Common Pleas Court over the direct file  
24 decertification program. The problem in a case

1 like yours, in my judgement, was not the  
2 original bail. \$2,000 bail. If you're going  
3 to be using cash bail at all, which is another  
4 matter, which is a larger subject of discussion  
5 which I'm sure we're going to get to, but if  
6 you're using a cash bail system at all, \$2,000  
7 for bail for a felony aggravated assault is not  
8 at the outset a reasonable amount of bail --  
9 unreasonable amount of bail. There may have  
10 been other factors involved in this case which  
11 should have lead the bail setting authority  
12 though to consider alternatives, like  
13 electronic monitoring, wearing an ankle  
14 bracelet, something like that. The real  
15 problem that I see in this part of Josh's case  
16 is the outrageousness of being held without a  
17 trial once you can't make that bail for 18  
18 months. Because way earlier in the system it  
19 seems to me, any responsible court system, even  
20 if they are not dismissing the case ought to  
21 say well, this is too long to hold somebody  
22 without an adjudication just because they can't  
23 come up with \$200. Well, it's 200. The bail  
24 was \$2,000. I thought that was the first case.

1 Are we talking about the first bail or the  
2 second bail?

3 MR. GLENN: It was 2,000. 20  
4 percent of 20,000. It was 2,000.

5 JUDGE LERNER: Well, let me then  
6 correct what I said earlier. That's a  
7 substantial -- extra substantial amount of  
8 bail. But there's no reason for somebody to be  
9 -- to have their bail simply remain at that  
10 original level if you can't get the case  
11 disposed of in a lot shorter period of time.  
12 But beyond that, it's really not possible for  
13 me even with my experience to comment on the  
14 facts and circumstances surrounding a  
15 particular case without knowing a lot more  
16 about the particular case. I can say as far as  
17 Romeeka Williams's case is concerned, I do know  
18 a lot more about that because I was the judge  
19 that presided over her case. And I was the  
20 judge that made sure that once we did have an  
21 adjudicatory hearing, that she would ultimately  
22 -- she would eventually be released on  
23 probation. And even when she had some problems  
24 on probation and was back before me as the

1 probation judge, I was the judge who determined  
2 that those problems did not justify revoking  
3 her probation or locking her up. I thought  
4 that was the right decision at the time and I  
5 still think that was the right decision.

6           The problem that we have here is,  
7 in part, a state legislative problem. The  
8 Direct File Act is old. It contains some  
9 provisions which I think experience has  
10 demonstrated don't do what they were supposed  
11 to do. It ought to be reviewed and it ought to  
12 be modified. But from the point of view of the  
13 city's district attorney's office, Defender  
14 office, and court, it's state statute. We're  
15 bound to enforce it.

16           COUNCILMAN JONES: Thank you. So  
17 back to your point about adjudication of youth  
18 as adults. I think to -- the one thing that  
19 comes in my mind is that one size does not fit  
20 all in any -- you have to look at the  
21 individual case. I think back to about five  
22 months ago there -- and I don't -- without  
23 prejudicing what happened, I'm sitting at a  
24 dining room table talking to a mother whose son

1 had been slain by a 15-year-old, allegedly, and  
2 a 20-year-old allegedly. I learned about  
3 issues of what is called a crash double and I  
4 asked you this. And where the older gentleman  
5 convinced the younger gentleman that if you do  
6 this, you're not going to get adult time. So  
7 I'm going to put this gun in your hand, commit  
8 this crime. The presumption of innocence I  
9 have. I'm just telling you the circumstances.  
10 I don't know if I would not -- if I were a  
11 judge, which I am not, want that young man  
12 certified, the 15-year-old as an adult because  
13 he committed, allegedly, a heinous act. And so  
14 each individual case for you, I wouldn't want a  
15 life-altering circumstance, don't know all your  
16 particulars, but based on what you have told  
17 me, what you presented here under testimony, I  
18 wouldn't want you to not graduate, not have a  
19 high school diploma, set into a series of  
20 catastrophic impacts on your life over a couple  
21 of dollars.

22                   The question for me would be are  
23 you dangerous to yourself or society. And if  
24 so, it wouldn't matter. It wouldn't matter

1 whether or not you're dangerous. On this other  
2 piece, the exact opposite is true. If that  
3 individual, 15 or not, is capable of pulling  
4 that trigger and taking someone's life, he's a  
5 danger to himself and to others. And so I  
6 don't know if one size fits all that would  
7 cover a decision we will not adjudicate  
8 individuals or we will only look at  
9 circumstances when you're an adult. So I don't  
10 know if I -- as a legislator and I'm not at the  
11 state, so I don't have to make that decision,  
12 but the effort of us today is to evaluate where  
13 appropriate. And how we can reduce the  
14 sentence that that never happens to another  
15 young man like you. Particularly the  
16 presumption of innocence. You spent 18 months  
17 -- and Judge Lerner is absolutely right, 18  
18 month of your life declaring that he was  
19 innocent is a heck of a price to pay.

20 MR. BETHEL: So I just felt  
21 compelled to add some clarification so that the  
22 law is viewed in proper context. You have to  
23 be 15 in order to be automatically transferred  
24 to the adult system.

1                   MR. GLENN: Right. And it's for  
2 anything --

3                   MR. BETHEL: It has to be a really  
4 serious charge. And it, in fact, has to  
5 include -- and it has to have involved a deadly  
6 weapon. You can be sent for a second and  
7 subsequent events, but that has to be for a  
8 felony of the first degree. 14-year-olds can  
9 be sent to the adult system, but that means  
10 that it doesn't happen automatically. The  
11 district attorney actually has to file a  
12 petition in order to make it happen.

13                   I also want to clarify what happens  
14 with juveniles who are sent to the adult system  
15 as far as Philadelphia is concerned. Can't  
16 speak for the whole state. And I'm certainly  
17 not going to try to speak for the entire  
18 country. But in Philadelphia, you go to a  
19 segregated area and the county prison, it's  
20 prison, you're held, you're detained in prison.  
21 But young people have said that they have been  
22 exposed to better educational opportunities in  
23 that setting for the first time in their life  
24 than they have experienced anywhere else. It's

1 called the Pennypack School.

2 MR. GLENN: Oh, you're talking  
3 about on the adult side?

4 MR. BETHEL: I'm talking about for  
5 juveniles who are on the adult side. That's  
6 right. The other thing is that if you are  
7 sentenced, you go to a place called Pine Grove  
8 until you're 22 and they also -- contrary to  
9 what you said and I know that that's what  
10 people put out there about our penal system,  
11 but they do make every opportunity to provide  
12 you with resources to rehabilitate. And  
13 everybody in that facility is under the age of  
14 22.

15 The last thing I would point out to  
16 you and it's consistent with what Councilman  
17 Jones was saying, is that after somebody has  
18 shot someone, maybe paralyzed, changed their  
19 life forever, is it acceptable to anybody in  
20 civilized society to say that no matter what it  
21 is that they did, they're going to be free and  
22 clear of any jurisdiction when they turn 21?  
23 Because that's what happened -- that's what  
24 would happen in our system if somebody who's

1 15, 16 or 17 does that. They have to be  
2 released when they turn 21 because that's the  
3 extent of juvenile court jurisdiction. The  
4 reality is that young people who have committed  
5 particularly violent crimes won't find a place  
6 in the juvenile justice system. Nobody will  
7 want to work with them. And I tried. In fact,  
8 I have worked to make sure that 18 and  
9 19-year-olds, and 20-year-olds still have  
10 access to the rehabilitation and treatment  
11 that's afforded the 15 and 16-year-olds.  
12 People don't want to work with you. And so  
13 it's a very difficult proposition. But it  
14 really boils down to making the right choices.  
15 If I have one criticism of the District File  
16 Law, it's that young people aren't told about  
17 it. And it's like you said, you know, when the  
18 old way comes to you and says hey, look, we're  
19 going to take down the corner store. All we  
20 want you to do is be the lookout. You stand  
21 outside, old way goes in, everybody gets  
22 arrested. Well, young bull who's age 15 is  
23 charged with conspiracy and his case  
24 automatically winds up in the adult system.

1 Well, we have been working really hard to make  
2 sure that the 15, 16, 17-year-olds know that  
3 that's the fact of the matter. And then the  
4 law does what it's really supposed to do. It  
5 deters people from making the wrong choice.

6 MR. GLENN: Can I just speak to --  
7 because I actually went to Pennypack School in  
8 there and all of the people that were in my  
9 class were all different ages, and we all were  
10 basically like in the same grade and we all was  
11 learning stuff that I learned in like  
12 elementary. So I know that school is  
13 definitely not really not good, how they say it  
14 is.

15 And another thing I want to talk  
16 about is, so in 1996 they reversed Act 33 so --  
17 at first it wasn't no Act 33. It was just --

18 MR. BETHEL: It was implemented in  
19 '96.

20 MR. GLENN: Right. It was  
21 implemented in '96. But before Act 33, they  
22 would just charge young people as juvenile and  
23 then if the case was serious enough, then they  
24 would transfer it over to adult court.

1                   COUNCILMAN JONES: So if I could, I  
2 want to keep us on track of bail. Because  
3 we're talking about bail, not adjudication of  
4 delinquents to adult.

5                   MR. COBB: Joshua, first I just  
6 want to thank you for your testimony. As a  
7 person who has been in conflict with the  
8 criminal justice system. My perspective is  
9 very similar to yours. I spent 10-and-a-half  
10 months in Holmesburg prior to actually having  
11 my bail reduced after what people would  
12 consider a jailhouse lawyer put it in paperwork  
13 which actually got me into court and then was  
14 given an ankle bracelet until I actually went  
15 trial.

16                   We're here because it has been  
17 acknowledged that our criminal justice system  
18 has to change. This is a Special Committee on  
19 Criminal Justice Reform. So quite frequently  
20 as I'm hearing testimony, I'm hearing some  
21 rosey things being put forward. I'm speaking  
22 to you directly because I know that you will go  
23 back to the hood and tell people that there are  
24 individuals who are sincere about changing the

1 things that have not been getting us the  
2 results that we want. So I want you to know  
3 that someone over here is listening. Someone  
4 has lived experience and I feel you, bro. The  
5 way that things are going are not the way that  
6 they should go. We know that certain  
7 communities are over policed. We know that  
8 certain behavior is hyper criminalized. We  
9 know that they run down on the same old dudes  
10 in the hood. We they know that they put cases  
11 on them. We know that they give them bails  
12 that they can't afford, and as a result of all  
13 that they eventually plead the charges and then  
14 they're living with 44,000 collateral  
15 consequences, having never committed an offense  
16 before. We know that the system produces a  
17 significant amount of that. I'm not going to  
18 say that your lived experience or my lived  
19 experience is the totality of what the system  
20 produces. But I do want to acknowledge that  
21 it's real and it's very real in neighborhoods  
22 where people are living in inescapable deep  
23 poverty. So, again, thank you for your  
24 testimony, brother, and we hear you.

1                   MR. GLENN: And I appreciate you  
2 all having me in.

3                   COUNCILMAN JONES: If there are no  
4 other questions for this panel --

5                   MR. ROJAS: I was the supervisor  
6 for the social workers in the juvenile area  
7 when I worked at the prison. And I think one  
8 of the problems is the backlog between the DA  
9 and the defense attorney in getting together  
10 and trying to expedite those cases because you  
11 cost us \$3,000 in one month on your bail.

12                   COUNCILMAN JONES: Could you repeat  
13 that?

14                   MR. ROJAS: If we can find a way  
15 where we can expedite those juvenile cases --  
16 now attempted murder is a very serious charge.

17                   MR. GLENN: Murder, you know, you  
18 don't have a bail for that so that --

19                   MR. ROJAS: Attempted murder is a  
20 very serious charge. The question is how  
21 quickly did they have a trial to determine the  
22 facts like the good judge said. And if you at  
23 around for 18 months, it meant that they  
24 weren't ready to go to trial yet and that's

1 where the problem is. So you sat around for 18  
2 months and if you total that up \$107 a day, you  
3 actually paid your bail while you were in jail.  
4 So I don't know what the -- if there's a way  
5 that the DA and defense attorneys can find a  
6 way to expedite cases for juveniles on the  
7 facts. Because that would save us a ton of  
8 money and at the same time eliminate you having  
9 to sit around for 18 months.

10 MR. GLENN: But repealing Act 33  
11 would do that because either you would have the  
12 -- the DA would have the discretion to look at  
13 the cases and see what's serious enough and  
14 transfer them over to the adult side if they  
15 fall under something that they would call an  
16 adult case. Right now they're automatically  
17 sending young people to adult side. So now the  
18 defense attorneys have to prove that your case  
19 is not serious enough to send it back to the  
20 juvenile side. So that's why we're trying to  
21 repeal Act 33 and turn it around, so that young  
22 people won't be automatically charged as adults  
23 because that's what they're doing now.

24 COUNCILMAN JONES: So I'm going to

1 remind us, we're on bail.

2 MR. GLENN: We are on bail. I'm  
3 sorry to keep going there but --

4 JUDGE LERNER: Well, look, the fact  
5 of the matter is that with all of its faults,  
6 the statute here in Pennsylvania, at least as  
7 administered in Philadelphia, is working a lot  
8 better and a lot more fairly than it is in many  
9 other places. And there are two reasons for  
10 that. One is that the Philadelphia District  
11 Attorney's office, although it does, as the Act  
12 permits it to do, charge people who's alleged  
13 offenses bring them under the Act, they're  
14 charged initially in adult court. The DA's  
15 office, even before defense counsel is  
16 involved, immediately begins to review those  
17 cases to see which ones, although legally  
18 charged, don't involve defendants who ought to  
19 be in adult court. So that when I was  
20 presiding over this court, more and more as  
21 time went by, the DA's office and the defense  
22 lawyer brought me a case of someone who was  
23 charged in adult court and said we have an  
24 agreement to send this person back to juvenile

1 court. Sometimes that was within not months  
2 but weeks. And in some occasions within days  
3 after the adult charge was filed. So there's a  
4 recognition here by the prosecutor and I hope  
5 by the court, that the statute is not -- should  
6 not be used simply as a way to hold juveniles  
7 for months without a hearing.

8           When you go to cases though where  
9 there's going to be a contested hearing and the  
10 defendants are adequately and properly  
11 represented, as they are in this area,  
12 especially when the Defender Association has  
13 the case, those direct filing hearings were  
14 taken place within, I would say, an average of  
15 three months after the preliminary hearing.  
16 That's not perfect, but it's not bad. And it  
17 means that somebody who's held without a  
18 hearing for a longer period than that, there's  
19 something wrong with the way their case is  
20 handled -- being handled. It may be something  
21 wrong with the way their lawyer is handling the  
22 case. It may be something wrong with the way  
23 the court is handling the case. But it's not  
24 standard operating procedure and it hasn't been

1 for several years.

2 COUNCILMAN JONES: So, I'm going to  
3 remind us, we're talking about bail. But I'm  
4 going to say this is worthwhile information for  
5 this committee to hear and we do hear it. And  
6 as I listen to this, I'm going to be  
7 Switzerland here because I'm at the chair here,  
8 but some people say there's gamesmanship. If  
9 I'm a good defense attorney, I know delay,  
10 delay, postpone, postpone and hopefully  
11 something falls out of the defense's witness  
12 part. I also know, what I heard you say, if I  
13 put you up on State Road, on the other side, on  
14 the flip side of that point, and keep you there  
15 18 months, I'm going to tenderize you for this  
16 deal I'm going to put in front of you because  
17 you really want to get out of there. So as we  
18 look at both sides of this issue, we need to  
19 keep that kind of in mind to say that this  
20 impacts to the degree of over 60,000 a year.  
21 For 18 months that you sat up there, you more  
22 than paid your bail several times. That is  
23 what this committee has to syphon through and,  
24 you know, people are going to play their games

1 but we should look to how we can resolve this  
2 in a way that gets justice.

3 MR. GLENN: Right. And not to  
4 mention, you leaving this decision up to a  
5 young person to make those big decisions. No  
6 parents are there with you when you make your  
7 decision if you want to take the deal or not.  
8 It's just me and the lawyer that I have  
9 probably seen twice out of 18 months. You know  
10 what I mean? So it's just like, you know, it's  
11 still not good for a young person to have to go  
12 through that alone and most likely they're  
13 going to make the wrong decisions.

14 COUNCILMAN JONES: Duly noted. But  
15 we're going to talk about bail today.

16 MR. GLENN: Relating back to bail.  
17 I work with a coalition called Incarcerated PA  
18 also, and we're trying to look for other states  
19 that, you know, ended cash bail and came up  
20 with solutions to keep people in the community  
21 so that they can build and try to create  
22 programs for people so that they can change  
23 what -- get to the root cause and change what  
24 lead them to commit the crime in the first

1 place.

2 COUNCILMAN JONES: Thank you for  
3 your testimony.

4 MS. SCHWARTZMAN: One point.

5 COUNCILMAN JONES: Pull the mic,  
6 please. Say your name for the record.

7 MS. SCHWARTZMAN: Ann Schwartzman,  
8 Prison Society. Building on what you had just  
9 said. That \$60,000 that we used to house you  
10 during that bail time or what could have been  
11 bail time could have been \$60,000 we put in our  
12 school system. If we rebuild our communities,  
13 if we strengthen what we have, there are much  
14 more opportunities for young people, older  
15 people so that they don't have to go to Pine  
16 Grove to get an education because that really  
17 is not the role of the prisons and it's really  
18 not what society should be doing.

19 MR. GLENN: Right.

20 COUNCILMAN JONES: Duly noted.  
21 We're going to talk about bail. Thank you.

22 Clerk, please read the next  
23 witnesses to testify.

24 THE CLERK: There's one final

1 witness for this panel that was a little late.  
2 His name is Reuben Jones. Can you step  
3 forward.

4 COUNCILMAN JONES: Reuben is such  
5 an expert. Just like a professor, we allow him  
6 to be late.

7 MR. JONES: Good afternoon,  
8 everyone.

9 COUNCILMAN JONES: State your name  
10 for the record.

11 MR. JONES: My name is Reuben  
12 Jones. Good afternoon to the panel. So in  
13 terms of bail, I want to present a couple  
14 different pictures. I'm glad Josh had a story,  
15 but there's a thousand other stories to be  
16 shared. For instance, in Philadelphia once a  
17 person is given bail, if he's working, if he's  
18 living independently in his own apartment and  
19 he's out for a minimum of, let's say, three  
20 months, let's say all goes well and he goes to  
21 court in three months, but in the meantime his  
22 job is in jeopardy, more than likely lost; his  
23 home is in jeopardy, more than likely lost. So  
24 now we're looking at a person who is unemployed

1 and homeless for -- in Josh's case -- and I  
2 want to use that example because I know -- I  
3 just want to use the number. In the case of a  
4 \$2,000 bail in contrast to what Ms. Schwartzman  
5 just mentioned about a greater investment in  
6 the community. So my challenge with bail is  
7 for us to remember that we're talking about a  
8 system that guarantees that folks are innocent  
9 until proven guilty. So when you're on State  
10 Road for the most part, you haven't been  
11 convicted of anything. There's an accusation.  
12 There's a charge. Most folks on State Road are  
13 waiting to go to trial. So if you spent 18  
14 months or 20 months or 26 months on State Road  
15 on the bail that either "A", you can't afford  
16 or there's a detainer because of a probation  
17 violation, then the likelihood of a conviction  
18 is very high. The likelihood of conviction if  
19 a person is home defending themselves with his  
20 attorney, with his legal team from home, the  
21 likelihood of getting a guilty plea is not that  
22 high. So we're looking at a system that  
23 because of one factor, because of bail, because  
24 a person was held up for an amount of money

1 that he couldn't afford to pay, there's a  
2 greater likelihood of conviction and there's a  
3 greater likelihood of unemployment and  
4 homelessness. Bail is supposed to be a surety  
5 to guarantee that this person appears in court.

6           So you're accused of a burglary  
7 and, you know, your court date -- this is  
8 August 1st. The court date is November 1st. To  
9 the court to feel satisfied that you will show  
10 up on November 1st, put up some collateral. If  
11 a person can't afford that, then he's detained.  
12 He's held while awaiting to go to court. The  
13 unfortunate part about it is that bail tends to  
14 lean more as a hammer against the poor. For  
15 those with resources financially and otherwise,  
16 bail is not an issue for them. For the working  
17 class, for the poor who get accused of crimes,  
18 bail becomes a major issue. And I think that  
19 that's one of the disparities that we really  
20 have to look at in terms of who's getting bail,  
21 how high the bail is set and what system of  
22 relief is there when they can't afford bail.  
23 Because ultimately, I think we all believe that  
24 a person does a greater good in the community

1 than he does inside of a jail on State Road.

2           Currently we're looking at -- I'm  
3 part of a coalition called No New Jails 215,  
4 and we are working collaboratively with City  
5 officials to look at some opportunities to be  
6 innovative in this City in terms of how we  
7 treat other human beings because our citizens  
8 are human beings. They may have been accused  
9 of a crime, but they're still human beings. So  
10 how can we treat citizens more humanely in  
11 light of the criminal justice system? So there  
12 are jurisdictions that have gone to a no cash  
13 bail process that I think behooves us to  
14 explore and we are exploring what were some of  
15 the challenges they faced, what were some of  
16 the processes and best practices that we can  
17 implement here in Philadelphia to develop a  
18 more fair process for ensuring that people go  
19 to court. Because at the end of the day, our  
20 main concern is that people show up for court.  
21 So they have their moment in court to either  
22 defend themselves and be adjudicated in a court  
23 case of a juvenile or acquitted in the case of  
24 an adult. Or if they are actually guilty, to

1 be found guilty and then punished. But we're  
2 combining multiple systems into one package.  
3 So that the bail system in Philadelphia  
4 actually acts almost as a sentence instruction.  
5 So because you're accused of a crime, you have  
6 a likelihood of spending upwards of two years  
7 in a county jail. Now I go in and out the  
8 county jails. I work with a lot of high-risk  
9 individuals out here. I do a lot of community  
10 work around this issue and I'm constantly,  
11 constantly challenged by folks who feel like  
12 they don't have a voice, and I'll give you an  
13 example.

14 I was in court about two weeks ago  
15 when my guy -- he's been incarcerated for about  
16 eight or nine months. His lawyer filed a Rule  
17 600(b) which is, you know, he spent more than  
18 180 consecutive days, through no fault of his  
19 own, not through his attorney asking for  
20 continuances but simply because the prosecution  
21 wasn't ready or whatever the case may be. And  
22 this case --

23 JUDGE LERNER: Could you state what  
24 the bail was without saying this gentleman's

1 name?

2 MR. JONES: So the amount -- I  
3 don't recall the amount of bail. So the 600(b)  
4 was to get him released on nominal bail because  
5 of the 180 consecutive days incarceration.  
6 What typically happens is -- what happened in  
7 this case was the District Attorney's office  
8 conceded the 600(b) but asked for a revocation,  
9 right. So the revocation was -- his trial is  
10 slated for September. So the revocation acted  
11 as a lever to keep him in jail. So you  
12 conceded the fact that okay, we kind of  
13 violated the rules. He's been here too long.  
14 He should be released. We'll concede that  
15 fact. But you ask the judge to revoke the  
16 bail -- even if though he granted the 600(b)  
17 and would have been given nominal bail but he  
18 -- well, he took it under advisement. So the  
19 long story short of it, he wasn't released, in  
20 a clear-cut case in which a person should have  
21 been released. So if we're going to talk about  
22 bail, we have to talk about being fair on all  
23 sides. This man has a young child and he has a  
24 family. So what we in essence did was

1 sanctioned through the criminal justice system  
2 the separation of the child from a parent.  
3 Now, is he responsible for the acts that were  
4 alleged? Absolutely, if he did it.  
5 Absolutely. But in the context of innocent  
6 before proven guilty, do we subject a young  
7 child to being separated from his father just  
8 because we believe that he will be found  
9 guilty? And I think that's a challenge that we  
10 all have to undertake and not presume and not  
11 make assumptions on innocence or guilt at the  
12 pretrial level. The pretrial level is simply  
13 to hold over to ensure that folks have their  
14 day in court. If the state or the District  
15 Attorney's office can prove their case or the  
16 defense attorney can disprove it. But I don't  
17 think that we can afford to mix those systems  
18 and judge and sentence a person at the pretrial  
19 stage.

20                   So going back to some of the  
21 jurisdictions that have gone to a no-cash bail  
22 system which we're advocating for in  
23 Philadelphia, there are numerous ways to hold a  
24 person accountable until they go to jail. One

1 of which, which I'm sure you heard a lot of  
2 talk about, is the day reporting centers.  
3 That's one sure-fire way to have some  
4 accountability for the accused without  
5 detaining them and separating them from their  
6 families, their work and their home. Another  
7 method -- and I'm sure you guys talked about  
8 this, but the ankle bracelet. I know a lot of  
9 jurisdictions are going to the DPC bracelets  
10 now, which not only give accountability for  
11 them showing up for court, but -- and this is  
12 why a lot of people push back on it, but you  
13 actually know their whereabouts, their  
14 movements 24 hours a day. So we're kind of,  
15 you know, accepting this archaic notion that  
16 the only way that a person can be assured to  
17 show up for court is if we detain them. I  
18 think we have to shift that mindset because as  
19 Ms. Schwartzman said so eloquently, these  
20 resources -- you have, we have closed  
21 20-something schools in this City. I mean, let  
22 that sink in. So that tells the community  
23 members what the priority is when we continue  
24 to close schools and shut down social service

1 resources, but invest in prisons and invest in  
2 detaining people. So I think that specifically  
3 in terms of bail, there is a better way, a  
4 better system we can explore in order to have a  
5 more just and a more humane criminal justice  
6 system.

7 COUNCILMAN JONES: You were worth  
8 being late.

9 MR. JONES: Well, I'm out there  
10 saving lives, so I thank you for that though.  
11 I appreciate that.

12 MR. EL-SHABAZZ: First of all,  
13 thank you for your testimony. Just some points  
14 of clarification and then there are some points  
15 that you brought up that we agree upon. I  
16 think that there are alternatives. House  
17 arrest can be an alternative. Electronic  
18 monitoring can be an alternative. We have to  
19 discover and to examine the amount of money it  
20 would cost and compare that to the amount of  
21 money it may cost to incarcerate someone prior  
22 to bail. If, in fact, it is cheaper to do it  
23 through house arrest and it's cheaper to do it  
24 through electronic monitoring and it's safer,

1 or just as safe then we can do that. The  
2 reason why I threw in safe, in part of your  
3 presentation you talk about the purpose of bail  
4 and you are absolutely right. That is one of  
5 the purposes of bail, one of which is to ensure  
6 that you show up for trial. But there is  
7 another purpose of bail. The second part of  
8 that is the safety of the public. Are you a  
9 threat to the community? And that is a --  
10 unfortunately that is one of the factors that  
11 generate and push this particular program.  
12 Because just as you indicated, which is rightly  
13 so, that that young man that is arrested and  
14 has a baby that he needs to take care of and  
15 may have had a job and is accused of this crime  
16 but not having been convicted yet, and crime is  
17 a serious crime, should be allowed to support  
18 that family. The individuals in the City, the  
19 public have a right to believe that they are  
20 safe from someone that maybe, again, maybe, and  
21 that's the factor, conditional factor, a threat  
22 to the community. So the surety is to ensure  
23 that they come and second to foster public  
24 safety.

1                   The other thing that you brought  
2 out is supposed to work as a checks and  
3 balance. For example, 180 days, Rule 600.  
4 Rule 600 basically says, as you indicated, that  
5 if someone doesn't go to trial within a  
6 particular 180-day period of time and it's no  
7 fault of their own, no continuances on their  
8 particular part, they don't want to -- their  
9 attorney is available all the time and it's the  
10 district attorney that is extending the case,  
11 then that person should receive a nominal bail.  
12 Absolutely, that is one of the checks and  
13 balances. Now, what you talked about in terms  
14 of a case, the revocation, that is not a  
15 problem within the bail system. That is an  
16 issue that occurred with a particular judge,  
17 and a particular attorney, and a particular  
18 district attorney.

19                   For example, revocation is not  
20 automatic. It's not that you receive a nominal  
21 bail and they say okay and the district  
22 attorney agrees to that and then all of a  
23 sudden there's a revocation of the bail. There  
24 have to be factors. And there should be a

1 hearing and a determination made by a judge, a  
2 sitting judge. This is why people should vote  
3 when judges run. A sitting judge to make a  
4 determination whether or not there were certain  
5 factors, certain conditions. I'll give you an  
6 example. You may have someone that is calling  
7 on these phones from prison that are recorded,  
8 that tell you that they're recorded saying go  
9 take the money to such and such so they don't  
10 go to court. Now, the phone tells you that  
11 it's recorded, but you're on the phone telling  
12 somebody not to take the money to such -- or  
13 take the money to this individual witness, so  
14 the witness doesn't come. Well, if the DA  
15 presents that information that you're trying to  
16 reach out to a witness and intimidate a  
17 witness, that may be a ground for a revocation.  
18 I don't know the situation in that scenario and  
19 we're not even going to get into that scenario.  
20 But that is one of the reasons why a revocation  
21 can be had. However, if the person was waiting  
22 to go to court, didn't have any continuances,  
23 didn't do the extent of what I was saying may  
24 have occurred, was a model prisoner, then maybe

1 -- or a detainee I should say, then maybe that  
2 individual is right. That's what Rule 600 is  
3 for. I agree that it absolutely that it has to  
4 be fair for all sides. But as we advocate for  
5 alternatives, we have to also advocate for  
6 public safety. And as we advocate for the  
7 family of the accused, we also have to advocate  
8 for the family of the victim. So we have to  
9 find that balance somewhere. We would like to,  
10 if at all possible, and I think during the  
11 course of our meetings, find a happy medium  
12 that can address electronic monitoring. Now  
13 understand, electronic monitoring you can cut  
14 the bracelet off and go about your business.  
15 But that is an alternative. We can find  
16 whether just house arrest and making sure that  
17 that person reports by phone and allowed to go  
18 to work and come back to their home, if that is  
19 a factor. We need to determine, one of the  
20 things the committee needs to determine so that  
21 we can really sincerely examine this is  
22 financial costs because that's one of the  
23 things that people are using as a factor as to  
24 what we should do with bail. And if, in fact,

1 we can demonstrate that it is cheaper and more  
2 cost effective and it doesn't affect public  
3 safety to get more monitors, then obviously  
4 that's something we can do. It's not going to  
5 be perfect to either side. I can be honest  
6 with you. It's not. Everyone is -- no one is  
7 going to totally be happy with whatever reform  
8 that's going to come, but we know that there's  
9 some reform that has to come. But we have to  
10 acknowledge that there are two sides to bail.  
11 There are two purposes to bail and if we can  
12 safely do it, cut cost, put money in the  
13 schools, make sure that individuals come to  
14 court at the same time, that's something we  
15 should do.

16 I think you gave us some things  
17 absolutely to think about. I think that it is  
18 encouraging because we have individuals that  
19 are looking at other jurisdictions where there  
20 is a success rate. So we actually have some  
21 statistics to look at, some examples to look at  
22 and I really believe sincerely that there are  
23 -- no system is perfect and I have been in the  
24 system 30 years. I can assure you it's far

1 from perfection. But I also can assure you  
2 that we do have some people working within it.  
3 If you would have went before a different judge  
4 with that same scenario, his bail may not have  
5 been revoked. I mean, judges are people and  
6 they have opinions and as the commissioner  
7 said, people have biases. So the fact that  
8 someone -- and I'm being real political here,  
9 someone didn't work effectively in terms of  
10 making a decision. Again, I only can make a  
11 decision based on what you said to me. If his  
12 bail was just revoke and he hadn't done  
13 anything or she hadn't done anything, there was  
14 no evidence that could have convinced any  
15 reasonable mind that this person's bail should  
16 be revoked but it was revoked purely for the  
17 purpose of holding them in jail, that's  
18 improper. But there are processes in there to  
19 appeal that.

20                   However, if, in fact, the person  
21 did engage with someone, regardless of 180  
22 days, that may give an indication that this  
23 person may be a threat, trying to tamper with a  
24 witness or doing something with the case, then

1 in those cases the revocation is not being used  
2 just to detain, but the revocation is being  
3 used as safety measure. So I say all of that  
4 to say first, clarification. And second, to  
5 say that I think that your presentation and the  
6 alternatives are an excellent idea and now we  
7 have to roll up our sleeves and find out what  
8 -- how cost effective it is, how much public  
9 safety does it guarantee individuals. Maybe we  
10 need to set particular crimes or alleged crimes  
11 that fit into that carrier as opposed to other  
12 categories. Maybe that applies to crimes other  
13 than murder generally and first and second  
14 degree murder. But for third degree and  
15 manslaughter on down, you can apply those.  
16 These are things that we have to explore. The  
17 unfortunate thing -- lastly, the unfortunate  
18 thing about this is that this took a heck of a  
19 long time to create this problem and it's going  
20 to take sometime to get out. We just need to  
21 really seriously look at and examine  
22 alternatives that will fit the profile for  
23 those -- for the public interest and for the  
24 interest of the community.

1                   MR. BETHEL: I just had a quick  
2 question. But you're part of the focused  
3 deterrence program.

4                   MR. JONES: Yes.

5                   MR. BETHEL: And the issue he  
6 raised about safety concerns, isn't that the  
7 concept that part of this focused deterrence  
8 program is what you described, the issue around  
9 safety concerns? So you're saying you're in  
10 conflict with the program as relates to how  
11 they're doing that? And if that is the case,  
12 has that been raised with the group?

13                   MR. JONES: So let me just say that  
14 public safety is the first concern for everyone  
15 in this room. I don't want to presume because  
16 you're talking about bail reform that that  
17 excludes public safety. So I just had to give  
18 a quick summary of what we were here to talk  
19 about bail. So in terms of deterrence, public  
20 safety is the first concern. In this  
21 particular situation, the bail wasn't revoked.  
22 There was a request for revocation. The judge  
23 took it under advisement until the person goes  
24 back to court in September. The trial is

1 scheduled for September. To me that's a clear  
2 indication of using bail as a means of holding  
3 him there because the bail could have easily  
4 been -- so that's why I want to paint a clear  
5 picture of what we're talking about because I  
6 agree with Mr. Cobb, we could talk in these  
7 fanciful terms, but sitting up on State Road is  
8 not pretty for someone who hasn't been  
9 convicted of anything and they have a family,  
10 they have a job, and they have a home.

11 MR. EL-SHABAZZ: Neither is being  
12 in a hospital being shot.

13 MR. JONES: And you're right. And  
14 neither is that. But what I want to be clear  
15 about is creating a balance between public  
16 safety and the humane treatment of those being  
17 accused of violating public safety.

18 COUNCILMAN JONES: Okay. Please  
19 just state your name again.

20 MS. TALARICO: It's Lauren  
21 Talarico. I just had a question. Maybe I'm  
22 not understanding on how you were saying the  
23 second purpose of bail is to hold people who  
24 might be a threat to public safety.

1                   MR. EL-SHABAZZ: No, I didn't say  
2 to hold people. I said there are two  
3 considerations. When the presenter was giving  
4 his quick overview and based on what he's  
5 saying to me, I know the quick overview. He  
6 understands that public safety is a major  
7 portion of it. Public safety is one. For  
8 example, someone who was arrested walking down  
9 the street with an AK-47 and he's accused of  
10 shooting down the block and shooting up a chair  
11 or a car and that person is arrested and you  
12 have five or six witnesses that indicates that.  
13 The question as to whether or not that  
14 individual bail should be nominal bail or bail  
15 that's \$50,000 is a question that is not only  
16 about that person showing up but the type of  
17 crime they committed and is this person  
18 somebody that we can trust that the public can  
19 be safe if the person is released. Those are  
20 the two prongs. It's not -- I'm not suggesting  
21 for the moment at all that it's just public  
22 safety. Just like I'm not suggesting for the  
23 moment at all that it's just someone showing up  
24 to court.

1                   Another example that I would give  
2 you, for murder -- murder generally, first  
3 degree murder and second degree murder, there's  
4 no bail. People are just as presumed innocent  
5 for murder as they are for any other crime.  
6 But there is a -- if you're charged and there's  
7 a prima fascia case, that's a fancy legal term  
8 saying you can go to trial and may be found  
9 guilty for first or second degree murder or  
10 murder generally, there's no bail. But if it's  
11 third degree murder which have different  
12 factors in it or manslaughter, still are  
13 killings, there is not a nominal, there is a  
14 number bail that someone can receive because  
15 the circumstances drives those scenarios. And  
16 those scenarios take into consideration  
17 definite appearance in court, but more so, the  
18 safety to the public. So yes, partly you're  
19 correct. It does drive -- it doesn't drive  
20 whether or not you're entitled bail, but only  
21 in certain situations. It does drive what you  
22 bail for. Everything is on a scale and there's  
23 certain crimes and search backgrounds and  
24 certain other considerations taken when someone

1 is given a bail.

2 COUNCILMAN JONES: I'm thinking  
3 that our next person to testify will give us  
4 some insight as to risk factors that we are  
5 considering as a city, because you raised  
6 interesting points and so the -- our co-chair,  
7 we have to look at is this a debtors' prison,  
8 does it pose a threat to the public, and where  
9 is the justice apparatus. They are three  
10 things that I can think of that is the system  
11 moving in a way that assures swift and certain  
12 consideration of justice. You raised that.  
13 But the other question is this -- we walk up  
14 the same streets and that AK-47 scenario scared  
15 me and I want to be safe when my kids play in  
16 those streets. So we have to look at all of  
17 that. And then we have to consider the  
18 individual who is accused rights and the denial  
19 of their freedom is a big thing. But all of  
20 that has to balance out and each -- no one size  
21 fits all. No one size -- each case is  
22 different. And I think as we start to do risk  
23 assessment, we have to determine -- we aren't  
24 going to get it all the way right.

1                   MR. COBB: Just to piggyback all of  
2 the exchanges that we currently had, I think  
3 what everybody offered is telling us or  
4 indicates to us what is inherently wrong with a  
5 cash bail system. In the event that I am a  
6 multi-millionaire and you give me a high bail,  
7 I have the capacity to pay that bail. So  
8 therefore, I am not incarcerated. If you give  
9 me a cash bail that I cannot afford to pay, I  
10 am sitting on State Road. That is the problem  
11 with cash bail, not considering any of those  
12 other factors. So, therefore, if I'm poor, I'm  
13 incarcerated. If I'm wealthy, I am liberated.  
14 So that's the problem with cash bail that  
15 everybody is kind of sort of talking about but  
16 haven't spoken directly to at this point.

17                   JUDGE LERNER: That's absolutely --  
18 I believe at least that that's absolutely  
19 correct. What Mr. El-Shabazz did is to set out  
20 perfectly the -- something that is not  
21 understood necessarily broadly and maybe that's  
22 a problem of our educational system. The  
23 Constitution and the laws of every state in  
24 this country and the federal government no

1 longer provide that the only purpose of setting  
2 bail is to ensure someone's appearance. In the  
3 federal government and in every state, the  
4 conditions of public safety which Mr.  
5 El-Shabazz was pointing out, are equally  
6 important in determining what the bail should  
7 be. And, again, it's a balancing factor.  
8 Nobody has a crystal ball to predict any human  
9 being's behavior in the future. But the  
10 problem is that in reliance on cash bail, we  
11 continue to use an ancient system of deciding  
12 whether or not somebody's likely to show up or  
13 whether or not somebody is likely to be a  
14 danger to the community if they're released, a  
15 system which really has no relationship to  
16 present day facts and circumstances. Just take  
17 for second the issue of not showing up for  
18 court. In a system in which the defendants are  
19 primarily white collar criminals or very  
20 wealthy people and the offenses generally are  
21 serious enough to -- so that if there's a  
22 conviction that person is going to go to jail  
23 for most of the rest of their life, you can  
24 make the argument that cash bail is relevant,

1 because unless you really tie up enough of that  
2 person's assets, they have the ability and they  
3 might have the will to go someplace where we  
4 can't find them.

5 In an urban criminal justice  
6 system, the huge majority of the defendants are  
7 not going anyplace very far away. And although  
8 it's annoying if they don't show up for court,  
9 the fact of the matter is that in most cases it  
10 ultimately will be more annoying for them than  
11 it is for the system because they're not going  
12 anyplace and we're going to find them and bring  
13 them back eventually. So cash bail has nothing  
14 to do, in my view, with a person's likelihood  
15 of showing up when you're talking about a  
16 criminal justice system like ours. Similarly,  
17 nobody has ever suggested credibility, as far  
18 as I can tell, that cash bail has anything to  
19 do with whether or not you are or aren't a  
20 danger to the community if you're released. So  
21 I think you'll find broad agreement ultimately  
22 on this panel and that's one of the main  
23 reasons why we're here, to look at what the  
24 alternatives are to achieve a bail system which

1 gives due consideration to both of the factors  
2 that are supposed to be considered when we're  
3 setting bail.

4 COUNCILMAN JONES: Thank you.

5 MR. JONES: So I appreciate that,  
6 Judge Lerner. And I think that the dialogue  
7 that we're having -- and I thank you for  
8 mentioning public safety. One of the dialogues  
9 we have when it comes to cash bail, if we were  
10 in theory to end cash bail today that doesn't  
11 mean that we're saying that everyone who gets  
12 arrested or is currently incarcerated is going  
13 to walk free because you still have a judicial  
14 to answer to, you still have this process. So  
15 that's what we're advocating. What we're  
16 advocating is simply we can do away with the  
17 cash bail process and still come up with a  
18 system that holds people accountable. That's  
19 all we're saying. And there are jurisdictions,  
20 as you will hear, who have done that.

21 COUNCILMAN JONES: Speaking of  
22 which, the jurisdiction that we will hear from  
23 has to catch a train. So we'd like to bring  
24 them to the witness testimony, if it's okay.

1 Thank you for your testimony.

2 MR. GLENN: Thank you very much.

3 COUNCILMAN JONES: Can you read the  
4 next group of witnesses to testify.

5 THE CLERK: The next witness will  
6 be Julie Wertheimer from the Managing  
7 Director's office. And then after that, the  
8 last panel will be Nick Wachinski, Cliff Keenan  
9 and Robin Campbell.

10 COUNCILMAN JONES: And could they  
11 come up beyond the rail so that we can have  
12 their testimony right after -- can you come up?  
13 Thank you. See how the roles reverse. Now  
14 you're on the other side of the table.

15 MS. WERTHEIMER: Julie Wertheimer,  
16 Chief of Staff --

17 COUNCILMAN JONES: Wait a minute.  
18 Hold up. Do you have guys -- the people who  
19 have travel issues, do we have enough time?  
20 Are you pressed?

21 (Discussion held off the record.)

22 COUNCILMAN JONES: Julie.

23 MS. WERTHEIMER: Julie Wertheimer,  
24 Chief of Staff to the deputy managing director

1 of criminal justice on behalf of the Kenney  
2 administration.

3           Good afternoon. Fun to be on this  
4 side. As you know, in April, the City of  
5 Philadelphia, including all of the criminal  
6 justice partners, the First Judicial District,  
7 the Defender's Association, the District  
8 Attorney's office was awarded a 3.5 million  
9 dollar grant from the MacArthur Foundation  
10 under their safety and justice challenge  
11 initiative. And what the goal of that award is  
12 to reduce our jail population 34 percent over  
13 the next three years, with a concentration on  
14 the pretrial jail population. That award was  
15 meant to fund six different strategies that  
16 will theoretically add up to that 34 percent.  
17 And one of those strategies has a lot to do  
18 with bails, which is why I'm in front of you  
19 today. So because we've had so much discussion  
20 thus far, I think it's important to put into  
21 context before we hear from national experts  
22 what the City and the criminal justice partners  
23 have already decided to commit to doing to  
24 prioritize. It's also important to understand

1 that what's in this plan isn't the  
2 end-all-be-all for the end of time in terms of  
3 criminal justice reform efforts in the City.  
4 It's just a set of strategies put forth, funded  
5 by this award, that we have agreed as a system  
6 to prioritize at this time and that also met  
7 the constraints of operating under a grant with  
8 certain specifications.

9           So I can briefly go through the  
10 four programs that fall under the first  
11 strategy which is addressing the  
12 over-incarceration of pretrial defendants. The  
13 first is looking at a new pretrial ritual to be  
14 developed. Our probation and parole department  
15 already uses one and so we're looking at  
16 creating one for our pretrial department. Now  
17 all of these initiatives are at different  
18 stages throughout their development. Some have  
19 when been implemented already. Some are going  
20 to take sometime. So this is one is -- while  
21 the wheels are already turning, is very much  
22 still down the road and I don't think any of us  
23 can confidently speak to exactly what risk  
24 factors are going to be included in it because

1 this involves working with academics from the  
2 University of Pennsylvania, and this is  
3 in-depth work that cannot be done overnight so  
4 has not been accomplished in the three months,  
5 four months we have had this award.

6           The second is basically an  
7 expansion of electronic monitoring, switching  
8 to wireless units, adding some additional  
9 landline units, and also having some additional  
10 staff, I believe. The third we refer to as the  
11 Pretrial Advocates Program which is going to be  
12 a pilot program where the Defender Association  
13 will conduct interviews prior to arraignment  
14 for the individual to consider unique  
15 circumstances of everyone who comes through the  
16 system.

17           And the fourth is early bail review  
18 which began on July 11th, which provides bail  
19 review within five days of arraignment for  
20 non-violent pretrial offenders with a bail at  
21 or below \$50,000; therefore releasing more  
22 individuals on pretrial supervision. This is a  
23 change from bail review happening two to three  
24 weeks. So we're cutting that down

1 significantly.

2                   So those are the four main  
3 strategies that are involved in the plan that  
4 directly look at the use of cash bail and  
5 provide some alternatives. I promised I would  
6 be brief. That's a brief overview of what  
7 we're doing right -- well, we've committed to  
8 doing right now in Philadelphia, specifically  
9 through this award. And so I would be happy to  
10 answer any questions that I'm able to at this  
11 time.

12                   COUNCILMAN JONES: So if I  
13 understand you correctly, there's a mad  
14 scientist somewhere in the University of Penn  
15 calculating a matrix that will create a risk  
16 assessment process that we can utilize in a  
17 more modern way within a reasonable amount of  
18 time. So do you think within the next year we  
19 will see this new risk assessment?

20                   MS. WERTHEIMER: I think that would  
21 be an optimistic preferable timeline.

22                   COUNCILMAN JONES: You have been  
23 hanging around politicians too much. So maybe  
24 yes, within a year?

1 MS. WERTHEIMER: A year, yeah.

2 COUNCILMAN JONES: Reasonable?

3 MS. WERTHEIMER: Yeah. Yeah.

4 COUNCILMAN JONES: I say that  
5 because I want to be able to mention other  
6 recommendations that I have heard before, and  
7 one of the reasons President Clarke wanted this  
8 body to assemble was, I wanted to time it with  
9 budget considerations. So if we're talking  
10 about GPS systems, two years ago now Justice  
11 Dougherty set me up with a hundred thousand  
12 dollars worth of GPS investment that he could  
13 reduce many of the overcrowded conditions on  
14 State Road. I sat with my colleagues and  
15 criminal justice reform was not the flavor ice  
16 cream of the month so it kind of went, you  
17 know, in one ear and out the other. Well,  
18 since your award and since President Obama,  
19 since the establishment of this commission, we  
20 are paying attention. So GPS is a thing that  
21 is a low-hanging fruit that we can do to reduce  
22 that and surely it's a good appropriation of  
23 dollars. So we are paying -- so any validation  
24 of those kinds of statistical facts versus

1 fears -- I know we're not going to get it all  
2 right. Somebody on GPS is going to cut it off,  
3 yes. But statistically we are safer, better as  
4 a city if we move in this direction, allows our  
5 body to make the appropriate assessment. So  
6 that's my hope that we can achieve --

7 MR. EL-SHABAZZ: Optimistic.

8 COUNCILMAN JONES: Yeah, me being  
9 optimistic.

10 MS. WERTHEIMER: Yeah. And I think  
11 it's important to note that because we're  
12 speaking about the confines of the grant award,  
13 over \$600,000 of the 3.5 is going towards  
14 purchase of the GPS and the necessary  
15 maintenance around them. So we have already  
16 decided as a system to take this relatively  
17 small but impactful pot of money and commit a  
18 considerable chunk of it to making that  
19 investment because we also believe in that as  
20 well.

21 COUNCILMAN JONES: The second item  
22 that I am truly for is day reporting centers.  
23 One of my brave colleagues who was here, Jannie  
24 Blackwell, fought for a day reporting center in

1 her district and it was as if she proposed  
2 something so wrong for her community, and it  
3 was met with that theory not my backyard kind  
4 of thing. But I remember her talking about  
5 people getting real treatment, people getting  
6 to the root causes of crime, all of the good  
7 benefits, but for politics with a small "P", it  
8 was defeated and she had to back away from it.  
9 I am saying to you that if you do this analysis  
10 and recommendations in conjunction with what  
11 we're doing in the amount of time, I will be a  
12 champion for it. And one of the considerations  
13 is that these folks are coming home anyway.

14 MR. EL-SHABAZZ: It's sensible. I  
15 don't need the mic for that. It's sensible.

16 COUNCILMAN JONES: So if we can  
17 validate it with what the study shows, I think  
18 maybe with a modification where if you're from  
19 19131, then you go back to a day reporting  
20 center in 19131. You're going to go back there  
21 anyway. Or the opposite may be true. People,  
22 places and things. I don't know. But that's  
23 where we rely on your study and judgement. But  
24 if, indeed, we can holistically approach this

1 in a restorative justice model on a day  
2 reporting center, then it's time for us to  
3 invest in some of those kinds of creative  
4 alternatives to incarceration.

5 MS. WERTHEIMER: Absolutely. And  
6 I'll reiterate the commitment made to you  
7 previously, that the administration is happy to  
8 continue the conversation about day reporting  
9 centers, and one of the primary reasons is that  
10 if we don't touch on that in what ultimately  
11 became this strategic plan is, as I discussed  
12 at the beginning of my comments, budget  
13 constraints. Had we decided to allocate what  
14 was a four million dollar proposed budget down  
15 to 3.5 to day reporting centers, we wouldn't be  
16 able to do any of the other things that we put  
17 forth in here. And so we looked for smaller  
18 items. And that's why I said this is  
19 important. This is the priorities that we have  
20 come up with as a system, but it's not the  
21 end-all, be-all of what we're willing to do or  
22 going to do.

23 COUNCILMAN JONES: So we're very  
24 thankful to you, the judge, the Kenney

1 administration for working collaboratively with  
2 not just us but the criminal justice advisory  
3 Board, CJAB, and others. So we're all talking  
4 to each other. We're not acting in silos. We  
5 are -- this body is charged with reporting to  
6 the appropriation authority, which is the  
7 Council. So that we put our money where all of  
8 our collective mouths are. And with that, are  
9 there any other comments?

10 MR. ROJAS: I just want to ask. In  
11 these four things, are you -- do you have a  
12 space there to ensure people with limited  
13 English proficiency are also incorporated?

14 MS. WERTHEIMER: I'm sorry, I  
15 didn't hear.

16 MR. ROJAS: People that present  
17 with limited English proficiency.

18 MS. WERTHEIMER: Are incorporated  
19 into which?

20 MR. ROJAS: The pretrial activist  
21 program.

22 MS. WERTHEIMER: I believe that the  
23 Defender Association has adequate staffing for  
24 language access.

1 COUNCILMAN JONES: Are we are okay?

2 JUDGE LERNER: Can I add something  
3 to that question? One of the main strategies  
4 in the grant is for the Defender Association to  
5 develop a service that they don't now provide  
6 because they don't have the staff for it.  
7 Haven't had the staff for it. And that is they  
8 are going to have a unit which is able to  
9 interview people upon their arrest and before  
10 their initial bail hearing appearance, before  
11 the arraignment magistrates, so that they can  
12 provide a lot more information about those  
13 individuals and about the safe conditions under  
14 which they can be released that are now  
15 available to the arraignment court magistrates.  
16 That unit is going to have the ability to  
17 communicate with people with different language  
18 backgrounds and language skills so that they  
19 can -- the defender can get the information and  
20 provide it to bail setting authority. So that  
21 is where the issue that your question goes to  
22 is at least originally going to be dealt with.

23 COUNCILMAN JONES: So just one  
24 other point. The research that we're doing

1 with the -- in cooperation with the University  
2 of Penn, are we doing similar research on  
3 reentry by way of risk assessments for  
4 returning citizens coming back? Are we going  
5 to look at some of the matrix that we're using  
6 or is it apples to oranges comparisons?

7 MS. WERTHEIMER: I don't think it's  
8 apples to oranges, but it's a little bit  
9 different in that what we're doing with  
10 pretrial and what probation on parole have --  
11 and I urge my colleagues to jump in and correct  
12 me if necessary, but it's very specific to  
13 Philadelphia. It's based on Philadelphia.  
14 What we have done with reentry, there's a few  
15 different models out there that we have used.  
16 One is ORAZ. We have a group on the reentry  
17 coalition that's looking at different R&R  
18 tools. And so while we are doing this very  
19 in-depth, customized effort on the pretrial  
20 side, we're exploring a number of different  
21 options because there's different needs for  
22 different assessments even when you're talking  
23 about reentry, is because our new prisons  
24 commissioner, you know, really believes that we

1 should start reentry upon entry into the jails.  
2 One assessment needs to happen then. One  
3 assessment needs to happen when you have a  
4 release date. You need assessments probably  
5 after you are released. So it's a variety of  
6 needs across the spectrum. But it's a little  
7 bit different than what we're doing here with  
8 pretrial.

9 COUNCILMAN JONES: Up at PCCD,  
10 we're looking at assessments on people  
11 reentering and the data that you're gathering  
12 has to have some relevance, people, places,  
13 things, conditions, where someone is released.  
14 I mean, there has to be some synergy where we  
15 can stand on the shoulders of giants and take  
16 some of that stuff. But there's like three  
17 major risk assessments. The one when we decide  
18 bail or alternatives to incarceration, one  
19 where someone is sentenced and where they're  
20 placed in the system by way of threat, and then  
21 the reentry part. And all of those three  
22 conditions and how they've changed one way or  
23 another should be taken into one set of data.  
24 A continuum of information that is provided

1 that people make along the arrest to release  
2 continuum. Good decisions based on constant  
3 data. So one thing I have been able to see is  
4 that we're making all these assessments and  
5 nobody talks to each other.

6 MS. WERTHEIMER: Right. And I will  
7 say and commend, you know, the adult probation  
8 and parole department because they have really  
9 been not only a resource but a leader within  
10 the reentry coalition in, you know, imparting  
11 their wisdom and their experience of risk  
12 assessments upon the rest of the coalition and  
13 trying to help us figure out how we can use  
14 what they already have in place to inform and  
15 make sure that we are talking to each other and  
16 not operating in silos.

17 COUNCILMAN JONES: Judge, do I see  
18 your light on because you want to make a  
19 comment? No.

20 JUDGE LERNER: No, I forgot to turn  
21 it off.

22 COUNCILMAN JONES: That's all  
23 right. I do that all the time. So if there  
24 are no other questions, you can join us back up

1 here and we can bring the next to testify.

2 Thank you for that insight.

3 MS. WERTHEIMER: Thank you.

4 COUNCILMAN JONES: Ms. Williams.

5 THE CLERK: The next panel can step  
6 up. That's Nick Wachinski, Cliff Keenan and  
7 Robin Campbell.

8 COUNCILMAN JONES: Thank you so  
9 much for your patience and spending the day  
10 with us. You can pull the mike to you. State  
11 your name for the record and begin your  
12 testimony.

13 MR. WACHINSKI: Just by short straw  
14 election, I have been determined to go first.  
15 Good afternoon. My name is Nicholas Wachinski.  
16 Several years ago, I will not put a number on  
17 it today, but several years ago I began my  
18 career as a criminal defense attorney here in  
19 the City of Philadelphia, handling any number  
20 of issues, not the least of which was bail  
21 arguments and as those of us who have practiced  
22 law in the City or sat as a judge in the City,  
23 we understand that bail arraignments in the  
24 City of Philadelphia happen 24 hours a day,

1 seven days a week. At that time I was living  
2 in Allentown and getting the 11:00 phone call  
3 saying hey, we've got an arraignment. Please  
4 go handle it.

5 But before I get too far into the  
6 details, Councilman Jones, I would like to say  
7 thank you for inviting me here today. I  
8 appreciate the opportunity to be here. I'll  
9 share with you what I shared with Councilman  
10 Jones when I first had the opportunity to meet  
11 him. I'm not just sitting here as a criminal  
12 defense attorney, as somebody who worked and  
13 has worked with bail, in bail, for bail, with  
14 bondmen. I'm sitting here as somebody who has  
15 pretty much been at every element or part of  
16 every element of the system. Yes, I was a  
17 criminal defense attorney. Yes, I have sat in  
18 specific cases as an arbitrator, as a judge pro  
19 tem. Yes, I have been involved in cases where  
20 I have been consulted by prosecutors and  
21 continue to advise on policies. But understand  
22 something, in 2003 I made a very bad mistake.  
23 I drank one too many beers after finding out I  
24 was accepted to law school and I decided to get

1 behind the wheel of a car and drive.  
2 Thankfully, thankfully, I only caused  
3 substantial property damage to property that  
4 didn't have any human beings occupying it. I  
5 didn't kill anybody. I didn't hurt anybody. I  
6 could have. So I have a been a defendant in  
7 the criminal justice system, and let me explain  
8 to you what that meant to my family.

9           Anybody here ever hear of the  
10 Bethlehem Steel? My father was a steeler. My  
11 mother was a secretary. There wasn't a whole  
12 lot of extra money laying around the house.  
13 And when I got in trouble, my father just found  
14 out that after 27 years of being a steeler, he  
15 was going to be retired and that all of his  
16 pension was going to be absorbed by the federal  
17 government. Meaning that he had one-third  
18 access to what he thought he had. When I got  
19 arrested and we appeared before the court and  
20 the judge, the magistrate judge advised us what  
21 a DUI ARD application cost, and because of the  
22 property damage that I caused and my blood  
23 alcohol content, what that meant that he could  
24 do in the world of bail, my mother lost it.

1 That money didn't exist. So we sit here today  
2 and we talk about racial bias and income bias  
3 in the system. I have heard the argument. I  
4 have listened to the policies and I have  
5 actually lived, not the racial part of it, but  
6 the income disparity part of it. Conversations  
7 across our country are ongoing with an  
8 increased desire to look at a more fair and a  
9 more just criminal justice system, and as  
10 you've identified today, really the thrust in  
11 these conversations related to bail is premised  
12 on three very large themes. A shift away from  
13 a wealth-based system towards a risk system.  
14 Rather than using money bail, people should be  
15 empowered to either judicially determine a  
16 person to be detained or use a state  
17 governmental agency to secure that individual's  
18 release because the perception is, is that it's  
19 more fair. And in doing so, the advocates of  
20 change are looking to look at GPS monitors,  
21 ankle monitor and other forms of supervision.

22 My experience is both anecdotal and  
23 data based. We can all agree that no person  
24 should languish in jail merely because he or

1 she cannot afford money bail. Pennsylvania is  
2 a unique state out of the 50 states in the  
3 union. When I say it's unique, we have arrest,  
4 then three to 10 days we have a preliminary  
5 hearing. Then after that we have a formal  
6 arraignment. Then after that there's a  
7 pretrial conference. And there may be other  
8 conferences that happen. At any one point --  
9 and you're kind of laughing because you know as  
10 well as I do how many times in Philadelphia as  
11 defense attorneys have we been in court on a  
12 status conference. At any one given point in  
13 time, can you ask for a bail modification and  
14 the answer is yes. Can you file for a bail  
15 modification? The answer is yes. Unique in  
16 Pennsylvania is other than the City of  
17 Philadelphia, you can apply for a bail  
18 modification merely by writing a judge a  
19 letter. That doesn't happen anywhere else.  
20 Nowhere else in the country does that access to  
21 the courts happen. But yet, what boggles the  
22 mind here is the one theme that no one seems to  
23 take seriously which is it's not bail, it's  
24 jail. What do I mean by that? We don't know

1 who we have sitting up on State Road. In 2009  
2 I was part of the first panel appointed by the  
3 Senate to review this issue. At that time,  
4 State Road had approximately 9,000 defendants  
5 in its custody. Today we're in the 72, 74,  
6 7600 mark. The biggest reason for that  
7 reduction is the cutting-edge progressive  
8 movement of Seth Williams's office in  
9 establishing a charging unit in ensuring that  
10 people are charged with appropriate crimes for  
11 the evidence that's being met. Procedurally, I  
12 love what just was talked about by Ms.  
13 Wertheimer from the Mayor's office talking  
14 about an automatic bail review within a certain  
15 number of days following an arrest. Because as  
16 my colleague in the defense bar pointed out,  
17 that gives us an opportunity to get in front of  
18 a judge, for a judge like Judge Lerner to sit  
19 there and evaluate public safety and the  
20 likelihood of return to court against the  
21 weight of the evidence and against the method  
22 for which a defendant can afford or not afford  
23 his or her release.

24 We have talked a lot today about

1 cash bail. Cash bail. How the wealthy can  
2 afford release and how the poor can't.  
3 Speaking from the perspective of somebody who  
4 couldn't, understand this, all I had to do that  
5 day was articulate to the court my lack of  
6 infrastructural access to money, my parents'  
7 lack of infrastructural access to money and an  
8 understanding right-minded judge weighed the  
9 evidence, weighed the likelihood of conviction  
10 and the seriousness of the crime and released  
11 me OR. Understand, in the United States of  
12 America, it is unlawful to set bail in an  
13 amount that cannot be posted. There is federal  
14 case law on it. There is state case law on it.  
15 And a judge who has been trained on this issue  
16 understands that.

17 One on the greatest joys in my life  
18 as I sit here today is that I have the ability  
19 and the opportunity to train all of our  
20 magistrate judges that deal in bail setting in  
21 Pennsylvania on Pennsylvania case law and  
22 Pennsylvania practice that deals with  
23 windshield bail, bail setting and bail  
24 forfeiture. All 567 judges come before me once

1 a year for a four-hour continuing education  
2 course on bail, bail on, bail practice. What's  
3 been most refreshing as that experience has  
4 afforded me access to those folks to understand  
5 that which they don't understand. It was  
6 shocking to me how many judges had no clue --  
7 when this program started five years ago, they  
8 had no clue they could not set bail in an  
9 amount designed to detain a defendant. Now  
10 there's not one single one that doesn't  
11 understand that concept. And I have had  
12 several of them tell me that continuing  
13 judicial education on this issue is invaluable,  
14 invaluable.

15 A word on risk assessment tools.  
16 Beware what you wish for. While money bail can  
17 be used to extrapolate and extract a guilty  
18 plea, so too can a risk assessment tool.  
19 Because once that risk assessment tool has been  
20 issued and risk scores indicate the person is a  
21 threat to public safety or a threat of risking  
22 a flight to another jurisdiction, believe me  
23 when I tell you, prosecutors don't forget that  
24 number. In fact, in 2014, it actually was as

1 bad in the State of Colorado that the State of  
2 Colorado defense bar was forced to advance  
3 legislation that specifically stated pretrial  
4 risk assessment tools are for the purposes of  
5 determining pretrial risk only. Again, the  
6 basis was people were getting guilty pleas  
7 extracted from them using the risk tool score.  
8 It is not all what it's made up to be. That  
9 being said, the other word on risk assessment  
10 that I will bring to your attention and it's  
11 important to note, is get online, go online,  
12 use that -- we talked about social media and  
13 Internet access earlier today. Please look at  
14 ProPublica's piece that was done on risk  
15 assessment earlier this year. After studying  
16 7,000 cases over a period of two years it was  
17 determined that even when the -- those who  
18 conducted this study ran a statistical test  
19 that isolated the effects of race from criminal  
20 history, recidivism, age and gender  
21 consideration, black defendants were 77 percent  
22 more likely to be assigned a higher risk for  
23 committing future violent crime, and 45 percent  
24 more likely to be determined to commit future

1 crime than similarly situated white defendants.

2           The other thing I'll point out to  
3 you, as my colleague in the defense bar pointed  
4 out, is bail is not just about the rights of  
5 the accused. It is also about the right of the  
6 community and the victims to be free from the  
7 threat posed by the accused. In 2009, the  
8 Philadelphia Inquirer reported 47,000 unserved  
9 arrest warrants with 1.1 billion dollars in  
10 unpaid bail forfeiture moneys. In 2014, USA  
11 Today reported that in the United States there  
12 are 186,000 cases where local jurisdictions  
13 would not spend time or money to retrieve an  
14 accused from another state. Fast forward to  
15 2016. I'll provide an anecdote for you in this  
16 regard. This year I'm currently working on a  
17 case where a young man has been arrested for a  
18 particularly heinous aggravated assault. Bail  
19 was set. Bail was posted by his mother and his  
20 step-father. 26 hours after he secured his  
21 release, he fled to the state of New Mexico.  
22 He's now sitting on an Indian reservation in  
23 southern New Mexico. And if anybody has ever  
24 dealt with extradition, you understand that

1 when you deal with tribal law, extradition is  
2 almost impossible. Oddly enough, mom and dad  
3 have been engaged to recently pass bail  
4 forfeiture laws in this state. Because of the  
5 risk of loss, they have been able to get the  
6 young man back on a plane. He's back on his  
7 way to Pennsylvania, and when he lands he will  
8 be taken into custody by the Pennsylvania State  
9 Police. That's how bail works. At it's purest  
10 level, bail is a quantification of risk. If  
11 it's set correctly by a judge in consideration  
12 of all the factors, including the financial  
13 abilities of the defendant and his or her  
14 support system, it is a measurement of risk.  
15 If you're Bernie Madoff, \$2,000 bail is  
16 literally a manicure appointment. If you are a  
17 son of a steel worker and a secretary, \$250  
18 unsecured bail with the threat of loss  
19 motivates good behavior, not because I was  
20 particularly responsible. Because I was  
21 terrified of my mother, my father and, more  
22 importantly, my grandmother if they had to come  
23 up with that money. Wholesale reform doesn't  
24 mean we have to jettison what already works.

1 Take what works and make it better. I said  
2 that jail is where we need to focus.

3 Janice Dean, a good friend from --  
4 I believe most of the people sitting at this  
5 table -- does work in Allegheny County. Late  
6 last year, sitting on a review panel at John  
7 Jay College of Criminal Justice, she made the  
8 most illuminating statement I've heard. Just  
9 because someone is detained in jail does not  
10 mean they can't afford bail. Looking this year  
11 at the State of Connecticut. The State of  
12 Connecticut did a bail reanalysis as reflected  
13 in my testimony. If you look at their 2,941  
14 people that were detained earlier this year  
15 from January to June, 67 percent had three or  
16 more prior convictions. 65 percent had more  
17 than one felony conviction. And those are two  
18 numbers that are in vacuums to one another. Of  
19 the 442 low-level offenders charged with  
20 misdemeanors, only 77 percent had three or more  
21 prior convictions. When I say that, I say that  
22 to say this. Those people have a concerning  
23 amount of risk associated with both flight and  
24 the propensity to commit another act. Public

1 safety. Again, knowing who sits on State Road  
2 will empower the courts, right-minded judges  
3 like Judge Lerner to be able to review cases on  
4 a regular basis to adjust bail within that  
5 five-day period. Just because we're reviewing  
6 bail doesn't necessarily mean that bail doesn't  
7 represent a concern.

8           Go gently into this issue. I  
9 encourage you very strongly to go gently into  
10 this issue, and the reason that I say that is  
11 there is a public safety concern. And despite  
12 the national talking points that are going on,  
13 most of the people that you're discussing are  
14 concerned about here are people that could  
15 potentially be causing substantial harm and are  
16 not going to be causing harm in the communities  
17 on the Main Line or the communities in the  
18 Allentown area or communities of people who  
19 look like me, and who talk like me, and who  
20 walk like me. But they're going to be  
21 communities of people of color, of limited  
22 means and those where the victims come from. I  
23 encourage you to ask as many questions as you  
24 like. I also encourage you to consider one

1 other thing. If you jettison the civil remedy  
2 that is at bail forfeiture and understand, if  
3 bail is set in any criminal case and a person  
4 fails to appear, that when the judge declares  
5 bail revoked, that means the person can be  
6 detained. When the judge declares bail  
7 forfeited, that means that those moneys become  
8 the property of the state in a designed  
9 motivation of getting that defendant back to  
10 court and getting that defendant to comply.  
11 That is a civil remedy in a criminal justice  
12 setting. If you lose that civil remedy, the  
13 only response is revocation of freedom in a new  
14 criminal charge. If you read my testimony,  
15 you'll find out that the State of Colorado has  
16 had a pervasive problem where when revocation  
17 for non-bail or bail alternative cases happen,  
18 there is \$750 supervisory fee. If you don't  
19 pay that fee in the space of the life of the  
20 case, it's a new criminal charge for failure to  
21 comply with the court order, otherwise known as  
22 contempt, and another \$750 supervisory fee.  
23 It's a cycle of indebtedness that is no  
24 different than what you are dealing with now.

1 Balance the issues and take what you have and  
2 make it better. Look at the jail population.  
3 Understand the jail population and work from  
4 it. Thank you.

5 COUNCILMAN JONES: Thank you for  
6 your testimony. It's humbling when you  
7 remember the hearing that you're talking about.  
8 And unless it's Philly's day, I was the chair  
9 of that committee and we did that hearing and  
10 we found some disturbing things by way of  
11 non-collection of bail and people not showing  
12 up and -- I remember at the time we were  
13 looking for any piece of loose change in any  
14 couch to save those public schools and that's  
15 what came to be, and it was a staggering figure  
16 of about 300 million dollars that people had  
17 forfeited, we hadn't collected. And it  
18 resulted in, I guess, the protonotary's office  
19 taking over the clerk of Court of Session's  
20 office because of that management. Not that  
21 one has anything to do with the other, but it  
22 was a staggering amount of money.

23 So with that, please begin your  
24 testimony. State your name for the record.

1                   MR. CAMPBELL:  If you don't mind,  
2  Mr. Keenan and I have agreed to switch, just  
3  because he is sort of on the ground in  
4  Washington, D.C. and so he's going to have a  
5  lot of sort of detailed responses for you.

6                   COUNCILMAN JONES:  Aren't we going  
7  to see you tomorrow?

8                   MR. KEENAN:  You are.

9                   MR. CAMPBELL:  That's right.  So  
10 I'll just give a national overview and that  
11 will give him an opportunity to get into the  
12 details which will probably be very compelling  
13 for you guys.

14                   Good afternoon.  My name is Robin  
15 Campbell.  I am really honored to be here today  
16 to provide testimony on the problem of money  
17 bail and the growing support nationally for  
18 commonsense alternatives.  Before I get into my  
19 written testimony, I just want to take a moment  
20 to underscore that bail generally refers to the  
21 mechanism by which you get people out of  
22 custody pretrial, right?  So there are many  
23 different tools you can use and one of those  
24 tools is money bail where you charge -- you

1 expect someone to pay money up front. That's  
2 just one of many different conditions that you  
3 can use. We tend to, across America,  
4 prioritize that one a great deal and a lot of  
5 what I'm going to be talking about is moving  
6 away from money bail to some of these other  
7 things. And I also just want to underscore  
8 that the Supreme Court and the Constitution  
9 have underscored the idea that the least  
10 restrictive conditions are what we should be  
11 prioritizing.

12                 So with that, I want to just say a  
13 little bit about the Pretrial Justice  
14 Institute. It's a 40-year-old organization  
15 that's been working with policymakers and  
16 justice system stakeholders to advance safe,  
17 fair and effective juvenile and adult pretrial  
18 practices. Over the past decade, PJI has lead  
19 a national movement to raise awareness of the  
20 dual system errors in our existing pretrial  
21 just system which I'll testify about in more  
22 detail later. We accomplish our work using a  
23 number of strategies, primary among these is  
24 our leadership role in the pretrial justice

1 working group, a consortium of national  
2 stakeholder organizations, including police,  
3 prosecutors, the judiciary and others who  
4 collaborate to support commonsense solutions to  
5 current pretrial challenges. We also support  
6 smart pretrial, which is a demonstration  
7 project funded by the U.S. Department Justice's  
8 Office of Justice Programs, which is working  
9 with three competitively selected sites:  
10 Denver; Yakima County, Washington; and the  
11 State of Delaware to show how jurisdictions can  
12 develop, implement and sustain pretrial risk  
13 assessment and supervision strategies that move  
14 away from money bail and its devastating  
15 consequences.

16 My testimony is also informed by my  
17 previous professional experience. Prior to  
18 joining PJI, I was a senior communications  
19 official at the New York City Department of  
20 Corrections. You may recognize this as the  
21 organization that runs the Rikers Island jail  
22 facility where, during my tenure, 85 percent of  
23 the roughly 11,000 people in custody on any  
24 given day were unconvicted. Which means they

1 were being held in jail pretrial while the  
2 charges -- their current charges were being  
3 resolved. Sometimes they were there for weeks,  
4 months or even years. As others have recently  
5 documented, many of those men and women were  
6 detained simply due to lack of funding for  
7 money bonds. Technically released by the  
8 courts, they were caught in a trap that  
9 disproportionately affects people of color and  
10 those without financial means.

11 To its credit, New York City has  
12 recognized that its jails have become de facto  
13 debtors prisons, and it is exploring and  
14 implementing ways to fix this. It is not  
15 alone. All across America, state and local  
16 officials are focusing as never before on the  
17 pretrial portion of the criminal justice system  
18 which is increasingly recognized as the front  
19 door of mass incarceration. The leader, of  
20 course, is the District of Columbia and I'm  
21 going to skip over this portion of my comments  
22 because we have got this expert here with --  
23 there's a paragraph in my prepared comments  
24 that you can read, if you care to.

1                   In recent years, many other  
2 jurisdictions, including Kentucky, New Jersey,  
3 parts of Colorado, and even Pennsylvania's  
4 Allegheny County have followed the District's  
5 lead in moving toward release decisions that  
6 are based on risk, rather than money. Others  
7 are just now embarking on this path. Earlier  
8 this year, for example, officials in New Mexico  
9 approved a referendum that if passed by the  
10 voters, promises to substantially curtail the  
11 use of money bail across that state. Last  
12 month Alaska's governor signed sweeping  
13 legislation that include measures authorizing a  
14 statewide pretrial services division that would  
15 administer pretrial risk assessments and  
16 provide varying levels of pretrial supervision.  
17 In Texas, where Sandra Bland died a year ago  
18 after three days in pretrial custody, arrested  
19 for failing to signal a lane change and unable  
20 to make \$500 bail, a special committee formed  
21 in 2015 by the state's chief justice is poised  
22 to present reform proposals and several  
23 legislatures have vowed to make bail reform a  
24 priority in the coming session. The chief

1 justice of California Supreme Court has also  
2 put money bail reform on the agenda. In her  
3 annual state of the judiciary address earlier  
4 this year, she called upon legislatures there  
5 to reconsider the use of money bail saying,  
6 quote, it is time for us to really ask the  
7 question whether or not bail effectively serves  
8 its purpose or does it, in fact, penalize the  
9 poor. The fundamental injustice of money bail  
10 has gained the attention of federal lawmakers  
11 as well less. Legislation has been introduced  
12 in Congress that would cut funding to states  
13 that continue to allow defendants to be  
14 detained for lack of money bail. The  
15 Department of Justice too has repeatedly stated  
16 its opposition. In March, for example, it sent  
17 a letter to state court judge and  
18 administrators warning that, quote, courts must  
19 not employ bail or bond practices that cause  
20 indigent defendants to remain incarcerated  
21 solely because they cannot afford to pay for  
22 their release.

23 All of this movement toward reform  
24 emerges from a growing awareness that while

1 money bail may have been conceived of as a way  
2 to see defendants released while their cases  
3 were pending, in practice it has just the  
4 opposite effect. The United States sees nearly  
5 12 million admissions to jail every year. As a  
6 result, nearly half a million unconvicted  
7 individuals are behind bars on any given day at  
8 an aggregate cost to taxpayers of nearly 14  
9 billion dollars a year. Most of these men and  
10 women are in jail for the simple reason that  
11 they are too poor to afford bail. For many,  
12 even modest amounts can be too much. Research  
13 from the federal reserve shows that nearly half  
14 of all Americans say they couldn't afford an  
15 unexpected \$400 emergency. That puts some  
16 perspective on Josh's comments earlier. \$2,000  
17 is a lot of money for a lot of people. And the  
18 fact that it's \$2,000 can be obscured by  
19 conversations about it's just \$200 if he had to  
20 deal with a bail bondsman. The reality is that  
21 \$200 is what it should have been and money bail  
22 figures are arbitrary and all over the place.  
23 Why isn't it \$200? In fact, I would argue that  
24 there should be none.

1                   Unnecessary pretrial detention can  
2 have devastating effects on low-risk  
3 incarcerated people and their families, as well  
4 as negative implications for the wider  
5 community. This is the first error in the dual  
6 system that I mentioned at the outset of my  
7 testimony. Pretrial incarceration can disrupt  
8 a person's employment, housing, education,  
9 behavioral or medical health and even lead to  
10 lost custody of children. Research shows that  
11 even three days in jail increases a low-risk  
12 defendant's chances of being rearrested during  
13 the pretrial period by almost 40 percent. When  
14 compared to similarly situated people who are  
15 able to secure release before trial, those who  
16 spend the full pretrial period in jail are more  
17 likely to be sentenced to jail or prison and  
18 for longer times. The jail sentences are three  
19 times as long. Their prison sentences twice as  
20 long. These negative consequences affect us  
21 all one way or another, but no one experiences  
22 the injustice of money bail more than  
23 communities of color, especially African  
24 Americans. A black person in the United States

1 is two-and-a-half times more likely to be  
2 arrested than a white person and, consequently,  
3 more likely to need to post bail. Money bonds  
4 people of color are required to pay are higher  
5 than those required of similarly-situated like  
6 defendants. Among African Americans, money  
7 bail amounts are, on average, 35 percent  
8 higher. Latino men pay a 19-percent premium.  
9 As a Philadelphia researcher recently  
10 concluded, quote, if wealth or race influenced  
11 the likelihood of being detained pretrial and  
12 both previous research, as well as evidence  
13 presented in this paper suggests that they do,  
14 then pretrial detention exacerbates  
15 socioeconomic inequalities in the criminal  
16 justice system, unquote.

17 The motivation for moving away from  
18 this unfair, ineffective and discriminatory  
19 practice is now being augmented by legal  
20 developments within the courts. Over the past  
21 year, a series of class action lawsuits have  
22 successfully argued that the use of money bail  
23 is a violation of the equal protection clause  
24 of the 14th Amendment to the U.S. Constitution,

1 which guarantees that all people accused of  
2 breaking the law will be treated equally by the  
3 courts. Thi is because two people alike in  
4 every other way may experience different  
5 outcomes, one, incarceration, the other  
6 freedom, if one has access to money and the  
7 other does not. Fortunately, there is a  
8 practical, increasingly well-documented  
9 alternative to money bail. Release decisions  
10 based on risk, combined with effective  
11 oversight of those whose risk is determined to  
12 be medium or high. Instead of using money  
13 bail, court officials in well-functioning  
14 pretrial justice systems make release and  
15 supervision decisions informed by an  
16 empirically-based and locally-validated risk  
17 assessment tool that predicts whether a  
18 defendant is likely to appear in court or be  
19 rearrested while on pretrial status. The  
20 success of this model forcefully refutes the  
21 often-heard assertion that requiring defendants  
22 to pay money in advance of their release is  
23 needed to ensure that they show up in court.  
24 Moreover, in the Federal Bureau of Justice

1 Statistics has issued a data advisory  
2 highlighting the limits of research claiming a  
3 causal relationship between money, bail and a  
4 court appearance. The only credible research  
5 to date shows defendants appearing in court at  
6 the same high rates whether they pay money up  
7 front or not.

8           It's also worth pointing out that  
9 money bail has nothing to do with public  
10 safety. It is focused on appearance. If a  
11 defendant is released on money bail and commits  
12 another crime, there is no consequence for the  
13 bail bond company that has underwritten his  
14 release. Only if that person fails to show up  
15 in court. Poles commissioned by PJI over the  
16 past several years show substantial support for  
17 risk-based release decisions. The most recent  
18 conducted last summer found that 83 percent of  
19 likely voters believed that people with money  
20 were able to buy their way out of jail, while  
21 poorer people remained incarcerated. Yet  
22 nearly three-fourths of respondents said that  
23 risk, not money, should be the primary factor  
24 in pretrial release decisions. This high rated

1 support transcends political, racial and ethnic  
2 divisions. It is worth noting that nearly a  
3 third of the respondents assumed that  
4 risk-based decision making was already in use,  
5 even though in practice fewer than 10 percent  
6 of jurisdictions use an empirically-derived  
7 risk assessment tool to guide pretrial  
8 decisions.

9           Much of my testimony so far has  
10 focused on the problem of low-risk defendants  
11 languishing in jail because they cannot afford  
12 money bail. In the final moments, I want to  
13 turn briefly to the second of the dual system  
14 errors I alluded to at the outset. An equally  
15 undesirable consequence of the current system,  
16 one frequently overlooked, is that nearly half  
17 of the most dangerous defendants exploit the  
18 money bail system to get out of jail pretrial,  
19 even though we might all agree that they should  
20 be held in custody in the interest of public  
21 safety. All too often we learn the  
22 consequences of letting people purchase their  
23 freedom from our local news.

24           In summary, emerging practices show

1 that replacing money bail with court-based  
2 release decisions informed by validated risk  
3 assessment tools and, when appropriate,  
4 effective supervision ensures that the right  
5 people are in jail pretrial and for the right  
6 reasons, while those can be trusted to go home,  
7 be safe and show up in court are allowed to do  
8 so. The solution to the problem of money bail  
9 is evidence-based and commonsense. It is also,  
10 according to the experts, entirely affordable.  
11 Implementing the solution, however, may not be  
12 easy. Changing laws, court rules and engrained  
13 ways of thinking and acting is never a simple  
14 matter, particularly when special interests  
15 with a financial incentive lobby to extend the  
16 status quo. As you continue to study this  
17 issue, questions will arise, assertions will be  
18 made, many of the answers will be apparent upon  
19 consideration, others may be impossible to  
20 prove where data does not exist or has not yet  
21 been collected. But the plight of men and  
22 women detained unnecessarily, not to mention  
23 the burden on taxpayers, coupled with the  
24 uncertainty associated with letting the small

1 number of genuinely high-risk defendants  
2 purchase their freedom makes this urgent issue  
3 that demands persistence.

4 I wish you good luck in this  
5 endeavor and thank you for inviting me to  
6 provide this testimony.

7 COUNCILMAN JONES: You presented a  
8 lot of information in a very efficient manner,  
9 but I want to wait for my questions until our  
10 last panelist testifies. You have a train to  
11 catch.

12 MR. CAMPBELL: I was the one with  
13 the train.

14 COUNCILMAN JONES: You're my D.C.  
15 guy, right? All right.

16 MR. KEENAN: Good afternoon,  
17 Councilman Jones, other Council members and  
18 members of the Special Committee on Criminal  
19 Justice Reforms. I'm Cliff Keenan. I'm the  
20 Director of the Pretrial Services Agency in  
21 Washington D.C. Unlike, Nick, my background  
22 doesn't include a run-in with law enforcement.  
23 But I do want to say that even though I have  
24 been with pretrial for about 12 years now, for

1 20 years prior to that I was a prosecutor in  
2 Washington, D.C., and for 10 years prior to  
3 that I was a police officer. So my entire  
4 career has been law enforcement. And I have to  
5 emphasize, effective pretrial justice is true  
6 law enforcement because it really does require  
7 accountability on the part of all of the  
8 participants in the criminal justice system.  
9 When I left the U.S. Attorney's office to come  
10 to pretrial, my colleagues there and on the MPD  
11 said why are you joining the dark side.  
12 Pretrial is about getting people out of jail.  
13 I said well, you know, there's different sides  
14 pretrial justice than simply keeping people  
15 locked up and I think that has been really  
16 solidified, you know, my interest in coming up  
17 here to share with us our experience in D.C.

18           People say why is D.C. so  
19 different? Let me tell you why D.C. is  
20 different. PSA was created by an act of  
21 Congress. The District of Columbia Bail Agency  
22 Act back in 1967. It is now an independent  
23 federal agency, but it originated as an entity  
24 within the D.C. government. But it had it's

1 origins in the national conference on bail and  
2 criminal justice which was convened by then  
3 United States Attorney General Bobby Kennedy in  
4 May of 1964. I was always amazed that within  
5 six months of his brother's assassination, he  
6 convened this conference because at the time he  
7 said it was meant to, and I quote, promote  
8 awareness that prevailing bail practices were  
9 unfair and that new methods had been developed  
10 for handling the problem of pretrial release in  
11 criminal cases and to assist courts,  
12 communities and organizations in developing  
13 systems to eliminate unnecessary detention of  
14 accused persons and provide fairer and less  
15 costly ways of enforcing their appearance in  
16 court.

17 Attorney General Kennedy's words at  
18 that time reminded the attendees of the key  
19 inequity in the monetary bail system: It's  
20 disparate impact upon poor people. He put it  
21 this way, quote, usually only one factor  
22 determines whether a defendant stays in jail  
23 before he comes to trial. That factor is not  
24 guilt or innocence, it is not the nature of the

1 crime, it is not the character of the  
2 defendant. That factor is simply money. How  
3 much money does a defendant have.

4 In many ways it is both remarkable,  
5 yet sad that here in 2016, more than 50 years  
6 later, we're still having the same discussions.  
7 I should say you're having these discussions  
8 because we're not having those discussions in  
9 Washington D.C.

10 That conference lead to the 1966  
11 Federal Bail Reform Act, which was the first  
12 major reform of the federal bail system since  
13 the Judiciary Act of 1789. The thing is, that  
14 act only applied to the federal criminal  
15 justice system in Washington D.C. because we as  
16 the nation's capital were under congressional  
17 rule at the time. Among the chief provisions  
18 of that law were the following: Presumption in  
19 favor of release on a person's own recognizance  
20 for non-capital defendants; conditional  
21 pretrial release with conditions imposed to  
22 reduce the risk of failure to appear;  
23 restrictions on the use of monetary bail bonds,  
24 which the court could impose only if

1 non-financial release options were not enough  
2 to assure the defendant's appearance; and  
3 review of the bail bonds for defendants  
4 detained for 24 hours or more.

5           In 1992, the D.C. City Council  
6 expanded the use of preventative detention by  
7 way of the Bail Reform Amendment Act because  
8 that was in response to the particularly  
9 violent crime that was going on within the  
10 District at that time due to the crack  
11 epidemic.

12           But I am proud to say that for  
13 nearly 50 years, PSA has utilized an effective  
14 system of non-financial release to promote the  
15 fair administration of justice, while also  
16 recognizing the need for public safety.

17           Our foundation is our risk  
18 assessment. Something that we have been  
19 utilizing since 1967. Our assessment predicts  
20 the potential risk of failure on the agency's  
21 two primary outcomes, failure to appear in  
22 court and re-arrest. Our current instrument  
23 was developed exclusively for D.C. and has been  
24 independently and scientifically validated by

1 the Urban Institute.

2 I wish you much success in the work  
3 you're going to be doing with the University of  
4 Pennsylvania. It did take us about  
5 two-and-a-half years and it cost us in excess  
6 of \$500,000, but once again, it's something  
7 which is well worth the effect. We assess  
8 every person who's arrested in D.C. who is  
9 going to be presented in court and we formulate  
10 release or detention recommendations based upon  
11 that arrestee's demographic information,  
12 criminal history and substance use and/or  
13 mental information that we have available. For  
14 defendants who are placed on conditional  
15 release pending trial, we are able to provide  
16 supervision and treatment services that  
17 reasonably assure their return to court and the  
18 fact that they don't engage in future criminal  
19 activity pending trial or sentencing. These  
20 services are designed to target and mitigate  
21 each defendant's assessed risk. Our services  
22 include routine contact with the pretrial  
23 service officer, notification of upcoming court  
24 dates, GPS monitoring, drug testing and

1 substance abuse and/or mental health  
2 assessments and appropriate treatment as  
3 indicated. One of the things that people  
4 continue to look at in D.C., you're a federal  
5 agency. You have a 61 million dollar budget,  
6 62 -- I knew Nick would know that a -- how can  
7 any of us afford that? Once again, strip away  
8 the bells and whistles, strip away the drug  
9 testing that we do, strip away the substance  
10 use that we ourselves administer, and the cost  
11 per defendant for pure supervision and risk  
12 assessment is about \$18.00 per day. \$18.00 per  
13 day, compared to how much does it cost to  
14 incarcerate somebody at your local jail.

15 Our system also benefits from the  
16 statutory framework that supports conditional  
17 release. We operate and service both the  
18 District of Columbia Court, as well as the  
19 United States Court and we abide by both sets  
20 of their legal statutory framework. They each  
21 contain presumptions of pretrial release on  
22 personal recognizance, but allow for  
23 presumptions to be rebutted in cases where  
24 defendants are charged with crimes of violence

1 or are already awaiting trial on another charge  
2 and/or are currently under probation or parole.  
3 In such instances, the defendants have the  
4 benefit of a full due process hearing before a  
5 final detention is made. The statutory  
6 framework, coupled with an effective risk  
7 assessment and supervision protocol means that  
8 in D.C., unnecessary pretrial detention is  
9 minimized, jail crowding is reducing, public  
10 safety is increased, and most significantly the  
11 pretrial release process is administered  
12 fairly. We say this with confidence because of  
13 the outcomes that we see within our supervised  
14 population and the impact on our system, as  
15 well as on our local jail. In Washington,  
16 D.C., as you will see tomorrow for those who  
17 are able to come, over 90 percent of the  
18 defendants are released without a financial  
19 bond. The efficacy of our program is  
20 demonstrated by the results that we see. Over  
21 the past five years, while supervising an  
22 average of over 17,000 defendants each year,  
23 nearly 90 percent of those released defendants  
24 made all of their scheduled court appearances

1 and remained arrest free while in the community  
2 pending trial. Of those who were arrested,  
3 less than one percent were arrested for a  
4 violent crime while in the community. In  
5 addition, 85 percent of the defendants who were  
6 released remained on pretrial release while  
7 their cases were pending without a revocation  
8 of release due to noncompliance. The vast  
9 majority of defendants who are not released  
10 pending trial are detained by statute, as I  
11 previously indicated. For some time now, the  
12 D.C. jail has been operating at about 50  
13 percent of its capacity with virtually no one  
14 sitting there on a money bond that they cannot  
15 meet. Money is not used in D.C. and we think  
16 our system works quite well, both from a  
17 community safety standpoint and in  
18 administration of justice standpoint.

19 In addition to the empirical  
20 evidence supporting our model, our practices  
21 align with nationally-recognized standards.  
22 Advocates for bail reform have identified  
23 several best practices for a high-functioning  
24 pretrial program. These include -- again, the

1 11 factors are in my written testimony, so I  
2 won't go into each of them. But, once again,  
3 it does depend upon risk assessment, holding  
4 each of the players within the criminal system  
5 accountable, and I think that in the long-run  
6 D.C. adheres to all of those practices and we  
7 have a track record to validate our success in  
8 doing so. We pride ourselves in striking the  
9 appropriate balance between individual  
10 liberties and community safety and the reliance  
11 upon evidence-based practices and data-driven  
12 approaches to maintain this equilibrium.

13 Thank you for the opportunity to  
14 talk with you this afternoon. I'm happy to  
15 answer any questions that you may have  
16 regarding our system that you may not get a  
17 chance to ask tomorrow.

18 COUNCILMAN JONES: Are there  
19 questions?

20 MR. BETHEL: This is a question.  
21 What do you say to a city like this -- let's  
22 take one of our more problematic, more violent  
23 neighborhoods where there is a lot of  
24 victimization, a lot of crime and a lot of

1 victims and we institute a bail. How do you  
2 address the victim side of this? And I know my  
3 colleague talked about this previously. How do  
4 you say to Ms. Johnson who sits there and says  
5 I have been burglarized and here he is and now  
6 he's back out again? Is that something you  
7 could talk about or -- I know in your case you  
8 have been at it for a long time, but maybe in  
9 your experience, how do you educate the  
10 community that this is not going to be a public  
11 safety issue for them that they -- because  
12 often times I come from a policing side and the  
13 first thing they always say well, you don't  
14 want to do anything. You let the guy out. You  
15 let him go. You didn't do this with him. Now  
16 you're going to turn around, you're going to  
17 lock him up, you're going to let him right back  
18 out in the community as if you don't care  
19 what's going on with us? Does that make sense?

20 MR. KEENAN: If I can address that.  
21 Again, one of the things that Nick said, and I  
22 think it's very important, if the bail  
23 condition is correctly set by the judge. In  
24 your case that you just described, if the

1 person is the victim of a burglary, if the  
2 evidence -- burglary in our jurisdiction is a  
3 dangerous crime. So the prosecutor can request  
4 preventive detention based upon the charge  
5 alone. But the judge must go through due  
6 process considerations, give the person a  
7 hearing, and if the judge determines that the  
8 person is a danger to the community, then the  
9 judge has the authority to hold the person  
10 without bail. But then the person has to be  
11 brought to trial within a hundred days. That's  
12 the trade off within our system. So it's a  
13 very speed trial. But think about it, with the  
14 money bail system, if the judge says well, I'm  
15 going to put 10,000, or 20,000, or 50,000  
16 without giving regard to potential danger  
17 community safety, if the person has the means  
18 that person may be able to get out if a  
19 bondsman is able to write that bond.

20 MR. WACHINSKI: Hang on just a  
21 second. First things first and understand  
22 something. In Pennsylvania everything he just  
23 said about preventative detention with the  
24 exception of the speedy trial component exists.

1 If tomorrow Judge Lerner was still sitting on  
2 the bench and I as a prosecutor had a  
3 particularly heinous case, regardless of the  
4 level of the charge, I can petition the court  
5 to have him -- meaning the defendant, detained.  
6 Again, there's no speedy trial rules other than  
7 Rule 600. Which Rule 600 controls all speedy  
8 trial regulations as relates to Pennsylvania  
9 law. There's component number one. So we do  
10 have -- let's not forget, we have preventative  
11 detention in Pennsylvania. So if we wanted to  
12 preventatively detain a particularly violent or  
13 non-violent -- I have -- you'll appreciate  
14 this. I had to argue in the Superior Court a  
15 case with the judge preventatively detained a  
16 heroin addict from stealing copper out of  
17 trailers in western Pennsylvania. The  
18 community got in an uproar and they wanted this  
19 person detained on his third arrest. The judge  
20 detained him for the theft of copper. Third  
21 case. Not particularly violent, but a problem  
22 in the community.

23 Now, my esteemed colleague from the  
24 Pretrial Justice Institute made a comment that

1 I completely and wholly disagree with under  
2 Pennsylvania law. He made a comment that there  
3 is no loss -- under a money bail system, that  
4 there is no loss if a person is arrested while  
5 released on money bail. In Pennsylvania that  
6 is statutorily untrue. Title 42, Section 5750  
7 specifically states that if you are released on  
8 money bail and a third party surety goes to  
9 bail for you -- so you're going to be related  
10 to me for 30 seconds. This is my uncle and I  
11 am arrested tomorrow for aggravated assault,  
12 domestic violences, and he posts my \$10,000  
13 bail. He then has an obligation under our  
14 Pennsylvania statutes to maintain contact with  
15 me. And if he finds out that I am going to  
16 violate a restraining order, have contact with  
17 the victim or a witness or I'm going to commit  
18 another criminal act, he has an obligation to  
19 report it to law enforcement so that it can be  
20 stopped. Why do we make people report it to  
21 law enforcement? Because in Pennsylvania,  
22 unlike many other states, a surety on a bail,  
23 whether compensated or not, whether a bondsman  
24 or private, they do not have power of arrest.

1 The only time you can arrest somebody in  
2 Pennsylvania on a bail is if they have failed  
3 to appear. So in 2015, Act 16 of 2015  
4 empowered bail sureties to report certain  
5 violations to law enforcement. In fact, they  
6 made it a duty incumbent upon all sureties,  
7 whether compensated or not, to protect public  
8 safety. And it is not, not a defense to make  
9 the statement that he didn't know because he  
10 didn't maintain contact with me.

11 Long story short, the commercial  
12 bail industry was a sponsor and proponent of  
13 that bill. The Philadelphia District  
14 Attorney's was a proponent and a sponsor of  
15 that bill, as was the District Attorney's  
16 Association. So as relates to public safety,  
17 as a former law enforcement officer, you can --  
18 at time bail is set, you can now be confident  
19 in saying when bail is set, third-party  
20 sureties, people who bring the bail money down  
21 to the CJC to post the bond have a duty to  
22 maintain contact and report any malfeasance of  
23 a defendant so law enforcement can  
24 appropriately -- trained law enforcement can

1 appropriately intervene. And I will tell you  
2 this, it is the most cutting-edge statute in  
3 the United States. There is not one single  
4 other state that has this duty incumbent on  
5 bail sureties. I think you would agree with me  
6 on that.

7                   And by the way, Cliff and I have  
8 been on opposite sides of this issue now for  
9 about 10 years, so we know each other and  
10 rather collegial with one another.

11                   MR. EL-SHABAZZ: So he was waiting  
12 for this.

13                   MR. WACHINSKI: He didn't know this  
14 part was coming.

15                   MR. ALFANO: Let me see if I can  
16 just summarize what you gentlemen have said in  
17 a top-down way. So you start off with what I  
18 think is an initial assessment of whether a  
19 defendant presents a risk, either a risk to the  
20 community or a risk of flight such that he or  
21 she may have assets where, you know, the bail  
22 almost wouldn't matter in terms of their  
23 ability to post it and then flee. So you start  
24 with that risk, what you called risk

1 assessment. But it's either risk to the  
2 community, whether it's violence or repeat  
3 offense or so wealthy and so well healed and so  
4 able to flee that that person should be  
5 preventively detained. That's where you start,  
6 right? That's the threshold determination?

7 MR. KEENAN: Are you asking me  
8 that?

9 MR. ALFANO: I'm just trying to  
10 understand how we would recast this system.

11 MR. KEENAN: You're correct.  
12 Except we in D.C. do not look at wealth.

13 MR. ALFANO: I understand. I'm  
14 just saying based on everything we have heard  
15 today and some of the illustrations that we've  
16 received. So you would start there. Once a  
17 decision is made that a defendant doesn't fall  
18 within one of those risk categories, then you  
19 would look at nonfinancial means to assure that  
20 person's appearance at trial?

21 MR. KEENAN: Correct.

22 MR. ALFANO: Isn't that really in  
23 the simplest terms what you have just proposed?

24 MR. KEENAN: Correct.

1 MR. ALFANO: Okay.

2 MR. KEENAN: But in Washington,  
3 D.C., although I didn't realize Pennsylvania  
4 had a preventative detention statute as well,  
5 that is the tipping point. Because money does  
6 not get calculated into the mix. But the  
7 government will in 10 percent of the cases  
8 request and be approved for preventative  
9 detention for those defendants who the  
10 government and the court think pose a danger of  
11 risk of flight or risk of danger to the  
12 community.

13 MR. ALFANO: I understand. But as  
14 we've just described it collectively, this is  
15 the only way to take money out of the system?

16 MR. KEENAN: Correct.

17 COUNCILMAN JONES: So quick shift.  
18 How long has this non-cash bail system been in  
19 existence in Washington D.C.?

20 MR. KEENAN: In Washington, D.C. we  
21 have been without money at all since 1992. And  
22 it has taken a culture shift. Because it  
23 didn't immediately happen overnight. But  
24 judges and prosecutors and defense attorneys

1 had to come to realize that money was an not an  
2 appropriate way of securing a person's  
3 reappearance or, again, community safety.

4 COUNCILMAN JONES: Statistically  
5 over that 16 years how has it impacted crime?

6 MR. KEENAN: Well, again, it's  
7 actually over 24 years. 1992.

8 COUNCILMAN JONES: I went to public  
9 school. I'm sorry.

10 MR. KEENAN: Back in the late '80s,  
11 into early 1990, '91, '92, D.C. was seeing 500  
12 murders in a year. We were truly the murder  
13 capital of the world. We saw a dip over the  
14 last 12 years, but we have seen homicides go up  
15 two years ago and we're now seeing a -- we're  
16 currently 15 percent behind where we were last  
17 year at this time in terms of homicides and  
18 robberies and aggravated assaults.

19 COUNCILMAN JONES: So now -- how do  
20 I say this diplomatically? So my daughter went  
21 to Howard. I dropped her off her first day. I  
22 picked her up her last day and it was a hell of  
23 a lot tuition in between. The demographics of  
24 the city has shifted by way of income, by way

1 of other social, economic. Apples to apples,  
2 is there a comparison in low-income  
3 neighborhoods to that same comparison? If you  
4 were to -- crime in Georgetown is different  
5 than crime -- what's that ward -- there you go.  
6 So I want to know in the high-crime areas  
7 before, is there a corresponding dip in crime,  
8 not the overall aggregate of the city?

9 MR. KEENAN: There is. I would say  
10 -- I would suggest that there is. Again, Ward  
11 Seven and Ward Eight, southeast and far  
12 northeast in D.C., back in the late 80s, early  
13 90s, that is where the huge amount of violent  
14 crime was occurring. It was not happening in  
15 Georgetown. It was not happening west of Rock  
16 Creek Park. The same is true today. Again, we  
17 have isolated incidents west of Rock Creek Park  
18 --

19 COUNCILMAN JONES: We still do have  
20 apples to apples comparison?

21 MR. KEENAN: I think we do. And  
22 the unfortunate thing is we still have apples  
23 to apples comparison in terms of who ends up  
24 getting locked up. You know, the vast majority

1 of the arrestees in Washington D.C. are African  
2 American and Hispanic people. The vast  
3 majority, 92 percent of our jail population  
4 continues to be African American, four percent  
5 is Hispanic. You know, a very small number of  
6 non-people of color. So apples to apples that  
7 is the way it is. But once again, I am very  
8 proud of D.C. because it's not financial wealth  
9 that is getting people out of jail. White  
10 people who are a danger to the community or are  
11 a danger of flight risk, are being held without  
12 bond, regardless of whatever their resources  
13 are.

14 COUNCILMAN JONES: So if it was  
15 members of Congress, Senate, which dangerous  
16 people are we speaking of?

17 MS. EL-SHABAZZ: Risk assessment  
18 would be a little bit different with Congress  
19 and people running for president.

20 MR. WACHINSKI: There's a report by  
21 the Washington Lawyers Committee that was  
22 issued on that very point you asked in 2003. I  
23 can share it with your office if you like. It  
24 speaks to that issue.

1                   I would also point out that in your  
2 question about asking about crime and how it's  
3 tracked, the shift away from the use of  
4 monetary bail, I'd encourage you to do some  
5 research into Proposition 47 coming out of  
6 California. About two years ago, Proposition  
7 47 was brought up and it has now since passed.  
8 It has made certain misdemeanor crimes no  
9 longer bailable. They're presumed -- they'll  
10 be released on OR or some bail alternative, and  
11 in that regard violent crime has peaked. 160,  
12 170 percent rate, murder rate in LA is up and  
13 in various other counties. Again, I can share  
14 with your office some of the materials on that.

15                   COUNCILMAN JONES: I think that  
16 would be useful to this panel to look at  
17 comparable cities when you talk about D.C., LA,  
18 where we can get a better sense of impacts and  
19 potential impacts here.

20                   MR. KEENAN: Could I make one more  
21 point? We have been talking about the purposes  
22 of bail and setting conditions of release. We  
23 focused primarily on two. Assuring the  
24 defendants return to court and community

1 safety. But I would suggest there is a third  
2 purpose that, again, judges in particular need  
3 to pay attention to, and that is to protect the  
4 rights of an arrested person who is not  
5 innocent. They're presumed innocent and  
6 there's a big difference. They're presumed  
7 innocent but they also have rights. And  
8 anybody who spends any time in jail, Robin  
9 alluded to three days and the negative  
10 collateral consequences, if I were to spend one  
11 or two days in jail, my life would be  
12 completely different. I'm not sure, Nick, if  
13 you spent any time when you were locked up, but  
14 once again, we tend to overlook the impact it  
15 has because it's not happening to me or to  
16 Nick, it's happening to those people. And the  
17 biggest opponents to our bail system in D.C.  
18 are the community members who say, as you  
19 alluded to earlier, keep this person locked up.  
20 He's been urinating in my alley time after time  
21 after time and I want him locked up. That's  
22 not the way our system works. That person  
23 should not remain incarcerated or convicted,  
24 quote unquote, to be punished because they

1 don't simply have the money.

2 MR. WACHINSKI: I think that's  
3 important. I think it's also important for  
4 this panel to take a look at some of the work  
5 of Tedla Tessa who has been widely accepted as  
6 an expert on these issues who will talk to you  
7 about the real dire threat that is posed by  
8 over-supervising somebody if you go to  
9 alternative to bail.

10 But I'll leave you with this and I  
11 want to be very clear. I think there is a good  
12 place for bail. I think it is an effective  
13 tool, especially as it is used in Pennsylvania.  
14 While my colleague to my right is very proud of  
15 his system in D.C., I love the system we have  
16 in Pennsylvania because of the frequency with  
17 which you are in front of a judicial officer,  
18 whether it be a magistrate or a judge and the  
19 level which you can communicate with the court.  
20 If bail is used properly in the State of  
21 Pennsylvania, it is an effective, efficient  
22 tool at managing both failure to appear and  
23 public safety, especially given our statutory  
24 protections and public safety.

1                   MR. ROJAS: Could I ask you a  
2 question? Can I ask both of you a question?  
3 If we have bail -- for example, the example  
4 used before where he put up your bail and it's  
5 his responsibility to ensure that you show up,  
6 what happens -- here in Pennsylvania there's 30  
7 percent that comes off the top when he puts up  
8 the bail. What kind of economic impact will  
9 that have on someone who puts up the bail for  
10 somebody else and that somebody else absconds?  
11 Have you done an analysis?

12                   MR. WACHINSKI: I don't understand  
13 the question.

14                   MR. ROJAS: Okay. In the State of  
15 Pennsylvania when you put up bail, 30 percent  
16 is administrative costs off the top. So if you  
17 put up a hundred dollars, \$30.00 is going to  
18 administrative costs. So when he gets his  
19 money back after the trial is over, he's only  
20 getting back \$70.00.

21                   MR. WACHINSKI: Correct.

22                   MR. ROJAS: Now if he absconds, he  
23 doesn't get anything back. He losses his  
24 money.

1                   MR. WACHINSKI: Not only does he  
2 lose the hundred dollars, but if it's a  
3 thousand dollar bond, which is what you're  
4 talking about, a thousand dollars, 10 percent,  
5 three percent really is used as an  
6 administrative fee, ten percent of the deposit  
7 he puts up with the court. He loses it all and  
8 he's actually liable for the remaining  
9 thousand. And the concept of bringing the  
10 remaining thousand is if this is my uncle and I  
11 have been comfortable enough to call him and  
12 say hey, I need your help. And if -- again,  
13 back to my earliest point on this discussion  
14 matter, which is it has to be a dollar figure  
15 which is attainable. So let's go back to my  
16 personal circumstance. Steel worker father,  
17 secretary mother. If the bond was \$2500 and  
18 they were asked to pay \$250 for me, that was  
19 real money in my family. So if they had to  
20 lose the \$2500, that made sure that they were  
21 going to make sure my butt was in the courtroom  
22 and that they would report any kind of negative  
23 behavior that I may be engaged in. The three  
24 percent or the 30 percent, however we

1 determined, that is the cost of supervision.  
2 Don't forget, just because we're saying  
3 nonfinancial conditions, let's not assume or  
4 let's not forget that there is no money  
5 associated with this. As my colleague pointed  
6 out, \$18.00 per day, \$18.00 per day. His  
7 agency runs 17,500 supervisees per year by his  
8 own testimony. He also, by his own testimony,  
9 has a budget in excess of 62 million dollars,  
10 which increases a million-and-a-half dollars  
11 per year from at least 2010 through current.  
12 So it's not nonfinancial. It's just not  
13 financial --

14 MR. ROJAS: But under your  
15 postulation, if you have low income people who  
16 cannot afford that amount of money, wouldn't  
17 that create another economic burden on the  
18 person that put up the money, forcing them  
19 maybe to go into crime to make up their loss.

20 MR. WACHINSKI: If bail is set the  
21 way that we're talking about which is complete  
22 ignorance of the circumstances of the  
23 defendant, just setting a number blindly, even  
24 then I would agree with you. Bail has to be

1 set accurately looking at the resources  
2 available. So if a person -- under  
3 Pennsylvania law, there are any millieu of  
4 convictions. If the person doesn't have  
5 access, they can be OR'd.

6 COUNCILMAN JONES: 62 million  
7 dollars. Can you tell me, where does that come  
8 from?

9 MR. KEENAN: Again, we're a federal  
10 executive branch agency. We go to --

11 COUNCILMAN JONES: Oh, me.

12 MR. CAMPBELL: I'm just going to be  
13 leaving now because I have to catch my train,  
14 but I just want to underscore one thing. There  
15 is no research, credible research anywhere that  
16 indicates that paying money upfront makes a  
17 person show up in court. We can talk about the  
18 details of the financial this and that and this  
19 whatever. No research anywhere, credible  
20 research anywhere indicates that making people  
21 pay money upfront makes them show up in court.

22 MR. EL-SHABAZZ: It just makes  
23 people good. You're absolutely right.

24 MR. MCSORLEY: And Mr. Councilman,

1 I just want to comment on your 62 million  
2 dollars. As the Deputy Court Administrator for  
3 the Trial Division for Common Pleas Court,  
4 pretrial here comes under me. Our budget is  
5 seven million dollars a year in a city that's  
6 twice the size of D.C. So when we go and see  
7 their program tomorrow, which is the Rolls  
8 Royce of pretrial from what I have heard, we  
9 have to keep in mind that we can afford a Kia.  
10 I also want to make -- seven million a year.  
11 And I also want to make a comment that this  
12 risk tool is just a tool. And all those steps  
13 that you're talking about that get you in front  
14 of a judge, at the bail motions and hearings  
15 and all those opportunities, none of them go  
16 away. None of them go away. Everything stays  
17 the same. So the district attorney and the  
18 defense counsel can make arguments to have the  
19 person released or have the person  
20 incarcerated, and Philadelphia is the only  
21 place that I know of in Pennsylvania where we  
22 do the 24-hour bail hearings with the public  
23 defender on duty 24/7. So defense counsel at  
24 the initial hearing. So it's just a tool.

1 It's not the push a button and everybody has to  
2 follow what the tool says. It's an opinion  
3 that the bail magistrate will be able to take  
4 into consideration.

5 MR. WACHINSKI: And if I may. Just  
6 keep in mind a couple of other things. "A",  
7 there's a prosecutor at every single  
8 arraignment and you point out tremendous  
9 details that are important to hear. First of  
10 all, 17,500 year arrests in Philadelphia  
11 between 55 and 59,000 a year, give or take, at  
12 least as last I recall. So you're about three  
13 times -- you need about three times the budget,  
14 not half. Population to population doesn't  
15 matter. It's volume of arrest to volume of  
16 arrest. You're looking at three times the  
17 budget at minimum. There is a prosecutor in  
18 every courtroom that can argue the converse.  
19 And one thing I want to point out -- I'm going  
20 to give a little kudos to our deserves. I have  
21 known Judge Lerner for my entire career and the  
22 one thing I found most impressive about his  
23 comment today is that it's difficult to make a  
24 comment about these things in a vacuum. You

1 have to hear both sides of everything. So the  
2 prosecutor is an integral part of that system.  
3 So I'll say that. I appreciate the fact that  
4 it is a tool, because one of the -- again, one  
5 of the biggest advocates of good policy in  
6 Pennsylvania we have is that the risk tool that  
7 exists in our courts in Philadelphia now can  
8 come in at high risk, and the magistrate can  
9 review the circumstances of the defendant and  
10 still choose to OR the defendant. And that  
11 does happen more than we ever talk about. It  
12 does happen more than we ever talk about. It  
13 does happen more than we ever talk about.

14           The last point I'll leave you with,  
15 and hopefully we'll allow all your folks to get  
16 back to your family or go back to the beach or  
17 wherever we all may be, is Delaware was  
18 mentioned today. Delaware is a state  
19 immediately to our south. They have just  
20 completed a validation of their risk assessment  
21 tool. And please hear what I'm about to say to  
22 you. They have just completed a validation of  
23 their risk assessment tool. They have 11  
24 factors in that risk assessment tool. Let me

1 be clear on the results. And I'm reading this  
2 from the report which, again, I'll share with  
3 your office. Individual risk factors on the  
4 Delaware pretrial risk assessment demonstrated  
5 a primarily weak and not significant  
6 associations with pretrial failure. Total risk  
7 scores do not -- excuse me, total risk score  
8 does not perform well in terms of predicted  
9 pretrial failure. Risk levels do not  
10 appropriately classify defendants into low,  
11 medium and high risk based on failure rates.  
12 I'm not saying tools should be jettisoned. I'm  
13 merely highlighting what the gentleman from the  
14 clerk's office said when he said this is a tool  
15 only. It cannot be used in abandonment of  
16 judicial discretion and it should never, ever  
17 make a recommendation as to the terms of  
18 release.

19 MR. COBB: Just to quickly  
20 piggyback off of what you just read. I  
21 literally captured from Judge Lerner. He said  
22 no one has a crystal ball that can predict  
23 human behavior. So it's laughable that we talk  
24 about these risk assessment tools as these

1 being the indicators as to how an individual is  
2 going to engage in future human behavior. I  
3 think it's pointless and wasteful investment in  
4 research.

5 MR. EL-SHABAZZ: Except this.  
6 There has to be some type of guidelines and  
7 some type of structure to make even an  
8 objective determination. And if they're used  
9 as a tool, they're used as guidelines. The  
10 bottom line is -- and if we're going to keep it  
11 -- my brother just said this. Let's just be  
12 very clear. If we're going to be very, very  
13 clear. If the magistrate or the district  
14 justice or the commissioner wakes up on the bad  
15 side of the bed and someone comes before them,  
16 you know, they might have had a fight with  
17 their husband, might have had a fight with  
18 their wife, their son might have wrecked a car,  
19 that affects bail. We don't take the human  
20 element out. But we have to realize that we  
21 have to do something. I think that if I can  
22 steal one of your quotes, the bottom line is  
23 this, we're not trying to trash any system or  
24 throw everything out, throw the baby out with

1 the bath water. But we're trying to look at  
2 those things that may help us in making the  
3 bail situation better for criminal justice  
4 reform. And I think that I would  
5 wholeheartedly agree that risk assessment by  
6 itself, in and of itself is a problem. But I  
7 don't think that that's the suggestion. I  
8 think the suggestion is that risk assessment,  
9 along with, I think, 10 other or 11 other type  
10 of factors is something that we should take a  
11 look at. Did I say that right?

12 MR. KEENAN: You did. But, again,  
13 going to your point. It's a great point. But,  
14 again, I agree with the judge and I agree with  
15 what you just said. It's a tool. I'm 63 years  
16 old. I have never had an accident in my life.  
17 My 17-year-old son just got his license. Who  
18 do you think is paying more in insurance? He's  
19 never had an accident either, but he's paying  
20 three times as much as I am because the  
21 insurance company says he's a higher risk given  
22 these factors that we're looking at. And you  
23 know what, I'm not challenging them, you know,  
24 because that's a tool that they consider to be

1 validated. If you're not doing it based upon a  
2 validated risk assessment, you're just going on  
3 somebody's whim, I would agree with you. But  
4 if it's a validated, scientifically validated  
5 risk assessment, again, it's not the be-all and  
6 end-all. But it certainly gives the judge more  
7 information or hopefully the judge to make his  
8 informed decision.

9 COUNCILMAN JONES: Just for the  
10 record, Judge Lerner never had a bad day where  
11 he raised someone's bail because of --

12 MR. EL-SHABAZZ: Did I even  
13 insinuate that? Let the record be absolutely  
14 clear, he was a gem of a judge.

15 MR. WACHINSKI: I think that  
16 Cliff's point is well taken. In fact, I think  
17 that it's a well-taken point consistently --

18 COUNCILMAN JONES: So the debate  
19 continues -- I'm sorry.

20 MS. SCHWARTZMAN: Risk assessment  
21 tools as an instrument can be very good, but  
22 the research does suggest that there are  
23 inherent racial biases, there are location  
24 biases, there are all kinds of biases that need

1 to be presented when risk needs are actually  
2 looked at. If we look at it as absolute  
3 science, that's where we run into trouble. So  
4 somehow it needs to be differentiated that it's  
5 something to use, but not adopted full way  
6 because it does present numerous problems.

7 MR. WACHINSKI: I love how  
8 everybody says something, there's always  
9 something else to remember and point out. I  
10 have worked with you twice now, today and once  
11 in Pittsburgh and I have always been  
12 illuminated by your comments. I love working  
13 with you. One of the things she just said is  
14 very important. She said risk needs. You  
15 didn't hear either one of us say risk needs.  
16 Pretrial risk assessment tools are risk  
17 assessment only. I have yet to see one in the  
18 pretrial phase that says risk and then by the  
19 way, based on this risk, this is what the  
20 defendant needs. Because that's a really  
21 intense, complicated, long, expensive process.

22 COUNCILMAN JONES: Because of the  
23 complicated nature of this issue, Julie, we're  
24 going to have another couple of months to

1 figure this out. I just want to thank  
2 everybody for testifying today. This helps us.  
3 I don't know if it answers all of the  
4 questions, but it sure as hell raised -- it  
5 created some new questions. I look forward to  
6 getting down to D.C. tomorrow to ask you some  
7 more questions. And thank you for the insight  
8 you have given me over the last couple of  
9 months. I appreciate it.

10 Are there any other questions for  
11 this set of witnesses? Seeing none, thank you  
12 for your testimony. Are there any people here  
13 to testify on this subject matter? Seeing  
14 none, I will hold the -- I just want -- one  
15 other thing. The best quote I heard during the  
16 two conventions, because we're going to be  
17 nonpartisan, both Republican and Democrat  
18 conventions was when --

19 MR. EL-SHABAZZ: Donald Trump?

20 COUNCILMAN JONES: No. It was  
21 Hillary Clinton. When she said we must reform  
22 our criminal justice system because everyone is  
23 safer when there is respect for the law and  
24 when everyone is respected by the law. And if

1 there is one clarient statement that defines  
2 our mission, it is that. That, you know,  
3 whether you're in blue or whether you're in the  
4 community, all of those rights, all of those  
5 rights that are given to us by the U.S.  
6 Constitution should be respected. And I now  
7 keep a copy of one in my pocket. I want to  
8 thank everybody. This committee -- number one  
9 book on Amazon. This committee will stand at  
10 recess to the call of the chair. Thank you  
11 all.

12 (Hearing recessed 4:23 p.m.)

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1 C E R T I F I C A T I O N

2

3 I hereby certify that the  
4 proceedings, evidence and objections noted, are  
5 contained fully and accurately in the notes  
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7 that this copy is a correct transcript of the  
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Special Committee On Criminal Justice Reform  
August 1, 2016

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