REDUCING JAIL AND PROTECTING VICTIMS

A ROUNDTABLE ON PRETRIAL SUPERVISED RELEASE

BY JULIAN ADLER AND KATIE CRANK

INTRODUCTION

At this moment of unprecedented political and public support to reduce the use of jails in the United States, there is both a need and an opportunity to ensure that jail reduction initiatives are responsive to victims of crime. Among other things, this means bringing the voices of survivors and support organizations to the table to ensure that diversion and supervision strategies adequately account for victims' safety and well-being. This is easier said than done.

Jail-reduction advocates typically focus on the collateral consequences and criminogenic effects of incarceration, arguing in favor of community-based alternatives for defendants, both pretrial and post-disposition. Yet victim support organizations are, by definition, focused on crime victims' safety. Historically, they have resisted jail reduction efforts in an effort to promote offender accountability. In effect, these two groups often innovate in silos, lacking a space conducive to sharing lessons learned, finding common ground, and working toward common goals.

Dialogue between these organizations is particularly crucial because many offenses that lead to jail involve victims. In particular, victims of intimate partner violence have often felt sidelined by criminal justice processes that focus almost exclusively on defendants.

As part of the *Safety and Justice Challenge*, a national initiative to reduce mass incarceration by changing the way America thinks about and uses jails, the John D. and Catherine T. MacArthur Foundation and the Center for Court Innovation convened jail reduction and victim advocates for a facilitated roundtable discussion focused specifically on the role of victims in pretrial supervised release programs.

The roundtable focused on three areas: defendant eligibility, conditions of release, and compliance monitoring. Participants discussed strategies for involving victims in the development of supervised release programs; risk assessment and victim safety; and the role of race and gender identity.

This document highlights this far-reaching and complicated discussion, drawing on the voices of the participants for illustration, texture, and nuance. While the roundtable certainly raised more questions than it answered, both the commitment of the participants to justice reform and the potential for progress

ROUNDTABLE PARTICIPANTS

Judge Ronald Adrine *(Moderator)*
Charlene Allen, *Common Justice*
Joel Bishop, *Mesa County Criminal Justice Services Department*
Tara Boh Blair, *Kentucky Pretrial Services*
Courtney Bryan, *Center for Court Innovation*
Judge Roberto Cañas, *Dallas County Criminal Court #10*
Judge James Cawthon, *Magistrate Judge, Ada County, Idaho*
Steve Chin, *Mesa County Pretrial Services Program*
Miriam Popper, *NYC Mayor's Office on Criminal Justice*
Kelly Dunne, *Jeanne Geiger Crisis Center*
Bea Hanson, *Office on Violence Against Women*
Michael Jacobson, *CUNY Institute for State & Local Governance*
Cliff Keenan, *Pretrial Services Agency, D.C.*
John Maki, *Illinois Criminal Justice Information Authority*
David Martin, *King County Prosecuting Attorney's Office*
Audrey Moore, *Special Victims Unit, Manhattan District Attorney's Office*
Monique Morris, *National Black Women's Justice Institute*
Farah Tanis, *Black Women's Blueprint*
Mike Tobin, *Wisconsin State Public Defender's Office*

Center for Court Innovation and MacArthur Foundation Representatives
Julian Adler, *Center for Court Innovation*
Liberty Aldrich, *Center for Court Innovation*
Greg Berman, *Center for Court Innovation*
Katie Crank, *Center for Court Innovation*
Laurie Garduque, *MacArthur Foundation*
Soledad McGrath, *MacArthur Foundation*

EXAMINING ELIGIBILITY

Any attempt to improve supervised release programming must begin with a conversation about eligibility standards. Roundtable participants discussed the opportunities and challenges they face as a result of local statutory requirements regarding pre-trial release, the difficult political calculus of including domestic violence defendants in supervised release programs, and the role of victims in determining standards for eligibility.

The following themes emerged in the discussion of eligibility:

The need for tailored conditions. Several participants argued that conditions of supervised release should be tailored to each participant's level of risk of reoffending. There was also a good deal of conversation about the need for program conditions to take into account the safety needs of victims, not just the supervision needs of defendants, in domestic violence cases:

> *"The philosophy ought to be that, when it comes to domestic violence offenders, whether it's at the accused stage or probation stage, that those cases should always come with some pretrial conditions."*
> **– Judge Roberto Cañas, Dallas County Criminal Court #10**

> *"Conditions need to be very well structured, as do the decisions of who stays in jail. That should be a very strategic decision. It shouldn't be somebody that can't make the cash register qualification at the door. That's the way we did business for a long time. That's malpractice, if we're doing that still."*
> **– Joel Bishop, Mesa County Criminal Justice Services Department**

> *"What we do know is that you don't want to over-supervise low-risk defendants."* **– Tara Boh Blair, Kentucky Pretrial Services**

The need for appropriate risk assessment. Many pretrial services programs utilize evidence-based assessment tools that measure risk of recidivism. Risk assessments that measure specific risk for domestic violence reoffending are often are often used at case disposition, specialized courts or probation and parole programs that focus on domestic violence. These two types of instruments spring from separate empirical bases and do not

often converge in practice. Roundtable participants discussed the need for integrated risk assessments that address both types of risk and are suitable for use at the pretrial stage.

"There's great discomfort in many areas of the criminal justice system to using actuarial and risk-based tools. And not just among the judges, but among many defense lawyers and many prosecutors that believe these tools are no good. But that assessment piece is so fundamental."
– David Martin, King County Prosecuting Attorney's Office

"We can't just say, 'Consider risk.' Everybody talks about risk of flight. That's one of the standards. What we want to move to is the risk of reoffending. It's sort of obvious, but I think it's important." **– Susan Herman, Deputy Commissioner of Collaborative Policing, NYPD**

"We had a homicide in our county that was low-risk on our pretrial risk assessment and low-risk on our domestic violence screening instrument. But we went back and looked at the lethality risk factors, which would have been off the chart, which could have caught that." **– Joel Bishop, Mesa County Criminal Justice Services Department**

"Because these cases defy labels like felony and misdemeanor, the system shouldn't be so caught up about, 'Well, it was just a slap in the face, not a broken arm.' If it's a domestic violence case, it deserves the resources of pretrial services."
– Judge Roberto Cañas, Dallas County Criminal Court #10

"In terms of eligibility, we took the mindset that we had to do it in the context of victim safety. We look at it in snapshots—what is our initial safety picture right now at this moment, and then how are we going to continuously get pictures on an ongoing basis while the case is pending so we can stay up on that safety picture."
– Judge Roberto Cañas, Dallas County Criminal Court #10

"When we're talking about assessments, we also have to be thinking about female defendants and what differences that makes."
– Liberty Aldrich, Center for Court Innovation

"As the courts move quickly to risk assessment tools, I worry that they're not specific to domestic violence. And I think we have to kind of get ahead of that trend. The question is, how do we properly categorize the offender, and in domestic violence cases, what should that analysis look like? Should we be looking at their criminal history? We know that the lethality factors are different. And how do we account for that? We know that we can't just focus on the felony cases, the crime before the court. It's the context and the severity of the domestic violence history that matters. So what should that analysis look like to properly categorize the offenders? Our High Risk Team Model looks to identify offenders who are at high risk of their violence escalating to a near-lethal or lethal level. And we bring together a multidisciplinary team, of pretrial services, prosecution, victim advocacy, probation, and relief. We're focusing on the high-risk offenders, and we have been focused on the pretrial phase because it's our experience that the decisions made at pretrial really affect what happens and what happens with the victims."

– Kelly Dunne, Jeanne Geiger Crisis Center

The reality that many defendants, including those arrested on domestic violence charges, will not be detained pre-trial. Some state laws dictate a "right to bail." Other states go further and mandate release, except in certain limited circumstances. Roundtable participants discussed the need to balance these laws with the safety of crime victims. Several participants expressed concern about the overuse of bail, especially in the context of excessive justice fines and fees across the country.

"In Kentucky, we have statutes and Supreme Court rules that mandate that all defendants shall be released. And we are a right-to-bail state, so unless it's a capital offense, every defendant has a right to bail."

– Tara Boh Blair, Kentucky Pretrial Services

"...for judges, if you're in a state [that uses] money bonds, then two things are in operation: fear and optics. So if the charge is great and the defendant is unknown, you're liable to put some number out there that you think is going to cause him to be detained."

– Judge Ronald Adrine, Administrative and Presiding Judge, Cleveland Municipal Court

"Texas is [a] right-to-bail [state], except a judge can hold somebody without bail in a domestic violence case. That was a very powerful tool."
– Judge Roberto Cañas, Dallas County Criminal Court #10

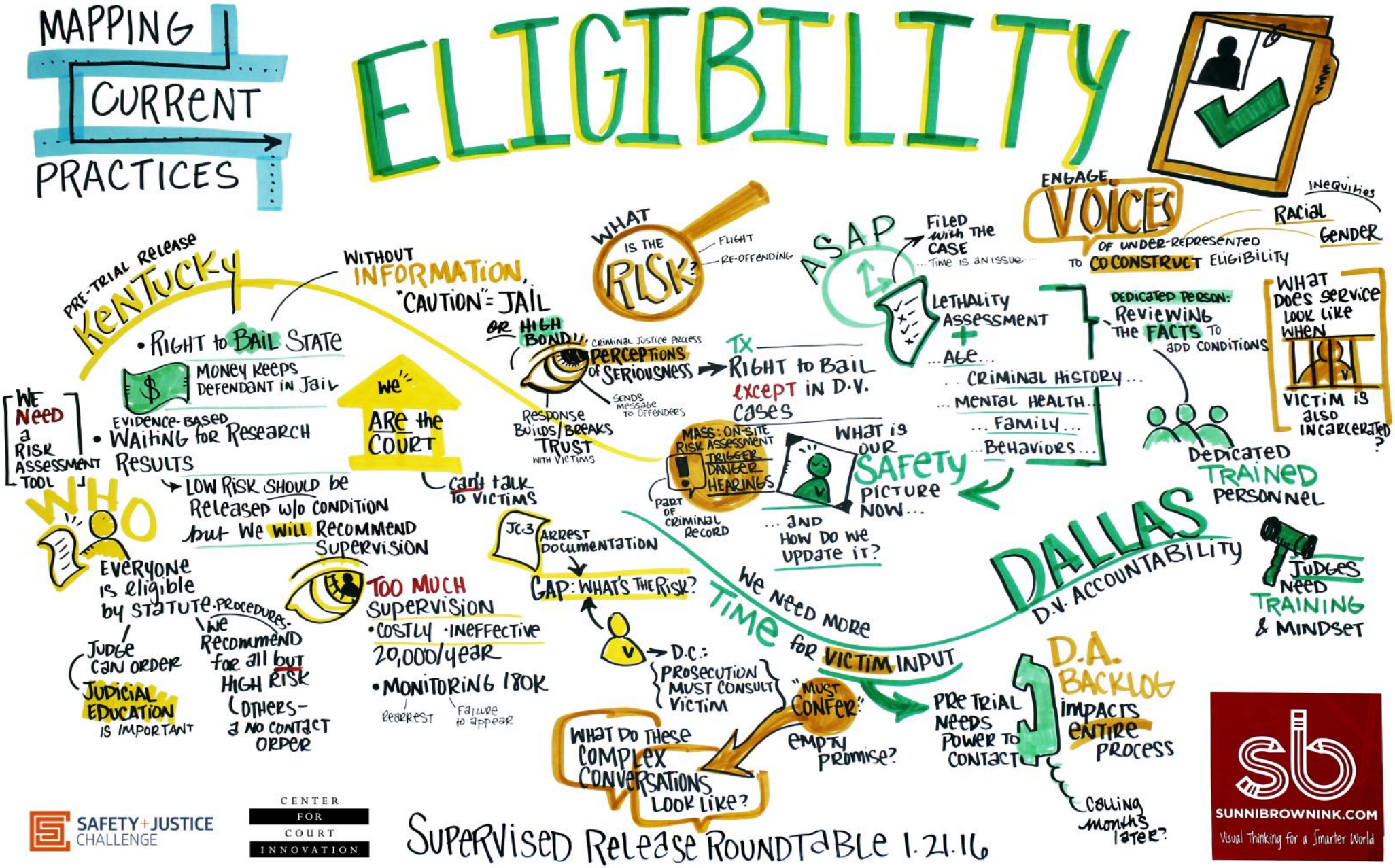
The challenge of incorporating victim voice into eligibility discussions. Participants discussed the critical need to include victim voices in programmatic decisions about eligibility for pretrial supervised release. Roundtable participants highlighted the needs of both individual victims and larger communities that have experienced disproportionate criminalization and incarceration.

"We cannot speak with victims. We talk directly to the judge—not in a hearing, not in a courtroom. That bail decision is made completely between the pretrial officer and the judge…victims don't have currently any say in the decision on whether or not somebody is released from jail."
– Tara Boh Blair, Kentucky Pretrial Services

"As a participatory action researcher, I think it's really important that we bring [victims'] voices not just as a consideration—an afterthought—but [instead that] they're an integral part of co-constructing specific eligibility criteria in the course of the conversation."
– Monique Morris, National Black Women's Justice Institute

"In many states there are state and federal rules that mandate at different parts of the system, prosecutors must confer with victims before sentencing…It's all well and good, but there are no enforcement strategies. There's absolutely no enforcement to most victims' rights, the thousands and thousands of victims' rights that are on the books… And so these are sort of empty promises. If you want to get victims on board, they cannot be empty. "
– Susan Herman, Deputy Commissioner of Collaborative Policing, NYPD

Figure 1. Roundtable participants' eligibiliy discussion was captured using graphic recording.



CONDITIONS OF RELEASE

Conditions of release, like criteria for eligibility, are typically influenced by local statutory requirements, available treatments, and alternatives to incarceration. Roundtable participants discussed using metrics to evaluate the efficacy of release conditions. Participants also discussed how conditions of release can best serve communities of color and gender nonconforming individuals.

The following themes emerged:

The need for a supervision matrix that incorporates risk-need-responsivity principles. Participants discussed the need for decision-making matrices for judges that take into account the risk of re-offense and appropriate conditions of release.

> *"The judges aren't using a money bond schedule; they're using a matrix when they're sitting on the bench that has presumptions. So if they're released on pretrial, we have a supervision matrix so they know what they're getting. And then we will not monitor any conditions unless they're specifically court-ordered, except the general conditions that the chief judge ordered be administered when pretrial supervision is administered. Then general conditions are imposed, and then more specific conditions may be imposed as well."*
> **– Joel Bishop, Mesa County Pretrial Services Program**

Conditions as rehabilitation or treatment. There was a great deal of conversation about the appropriateness of adding conditions of release to pretrial monitoring. Several participants argued that conditions of release which address criminogenic needs (e.g., participation in a job training program) may be a positive alternative to incarceration. Other participants worried that, in some places, the lack of availability of appropriate treatment options may constrain these practices.

> *"I think the discussion on conditions of release, everyone tends to look at conditions of release as a negative. And they're not always a negative. There are good conditions of release, and that's helping that defendant become successful…Conditions don't always have to be negative; they can be positive."*
> **– Steve Chin, Mesa County Pretrial Services Program**

"Pretrial conditions [could] include some level of opportunity for [defendants] to get, not just anger management, but something specific to their actual circumstance. If they're living in extreme poverty, you can bet that when they go back out into their community, they're going to re-commit a crime or they're going to potentially harm another person."
– Naimah Johnson, Black Women's Blueprint

"When we talk about conditions of release, it's meaningless unless you can point to numbers or something that shows the effect of what you're doing. So we have really tracked our outcomes closely and we're watching these very closely… I want to know if what we're doing is working. And so I'm staring at the data all the time, and we'll throw things out that don't work and readjust when it does."
– Joel Bishop, Mesa County Pretrial Services Program

"Some of these conditions and some of these tools or pretrial conditions were established in a time when the system was not built to protect people of color, when the system was not built to protect people who are gender variant, when the system was not built to protect people who were not born in the United States."
– Naimah Johnson, Black Women's Blueprint

"We have to talk about trauma and how trauma impacts victim capacity, as well as harm-doer capacity and their ability to interact with interventions and all of the things that we're talking about here. You don't have to be a mental health clinician or a medical professional to be able to intuit or understand how trauma is impacting a person's capacity to participate, and that that needs to be a part of the conversation about how we are changing and the discourse around intervention." **– Naimah Johnson, Black Women's Blueprint**

"Trauma is not just the act that occurred. It's historical trauma. There are other issues that many of the victims and perpetrators are dealing with." **– Monique Morris, National Black Women's Justice Institute**

"The trauma of racism, the trauma of oppression, the trauma of historical injustice." **– Naimah Johnson, Black Women's Blueprint**

"The trauma of past incidents of violence." **– Susan Herman, Deputy Commissioner of Collaborative Policing, NYPD**

The need to include victim voices in determining conditions of release that promote victim safety. Roundtable participants highlighted that although pretrial services staff may be limited in their ability to confer directly with victims, the need to include victim voices either directly or indirectly in IIcrafting conditions of release—especially in domestic violence cases—is critical.

"Wouldn't it be great to invite victim advocacy experts to talk to supervision officers? To say, if you are supervising a domestic violence defendant, here are some of the things you ought to be thinking about, looking at, trying to work with. To make sure that they're looking at it from this perspective. This is not any other defendant. It's not a drug defendant, it's not a shoplifting defendant. It's a violent crime defendant—take away the word 'domestic'—looking at it that way."
– Cliff Keenan, Pretrial Services Agency, D.C.

"My question for folks who do have the opportunity to confer with victims prior to making decisions: What does that conversation look like? Because it's really complex. In my program, we have the opportunity to confer with victims over the course of days, often several meetings that are hours long, and then again and then again. And what happens in the course of those meetings is that the place where that victim is changes very dramatically, often from, you know, 'Can he go to jail forever' to 'Wait a minute, what do I want in terms of what safety looks like for me? What is going to happen down the road when he gets out?'"
– Charlene Allen, Common Justice

"In Mesa County, the DA's office has a victim advocate who will meet with the victim. They will take them to court if they want to go to court…Victims get a chance to have a say on bond conditions…They have a voice in sentencing or the decision to defer prosecution. It's up to the judge what they do with that. But the victim does have that right."
– Steve Chin, Mesa County Pretrial Services Program

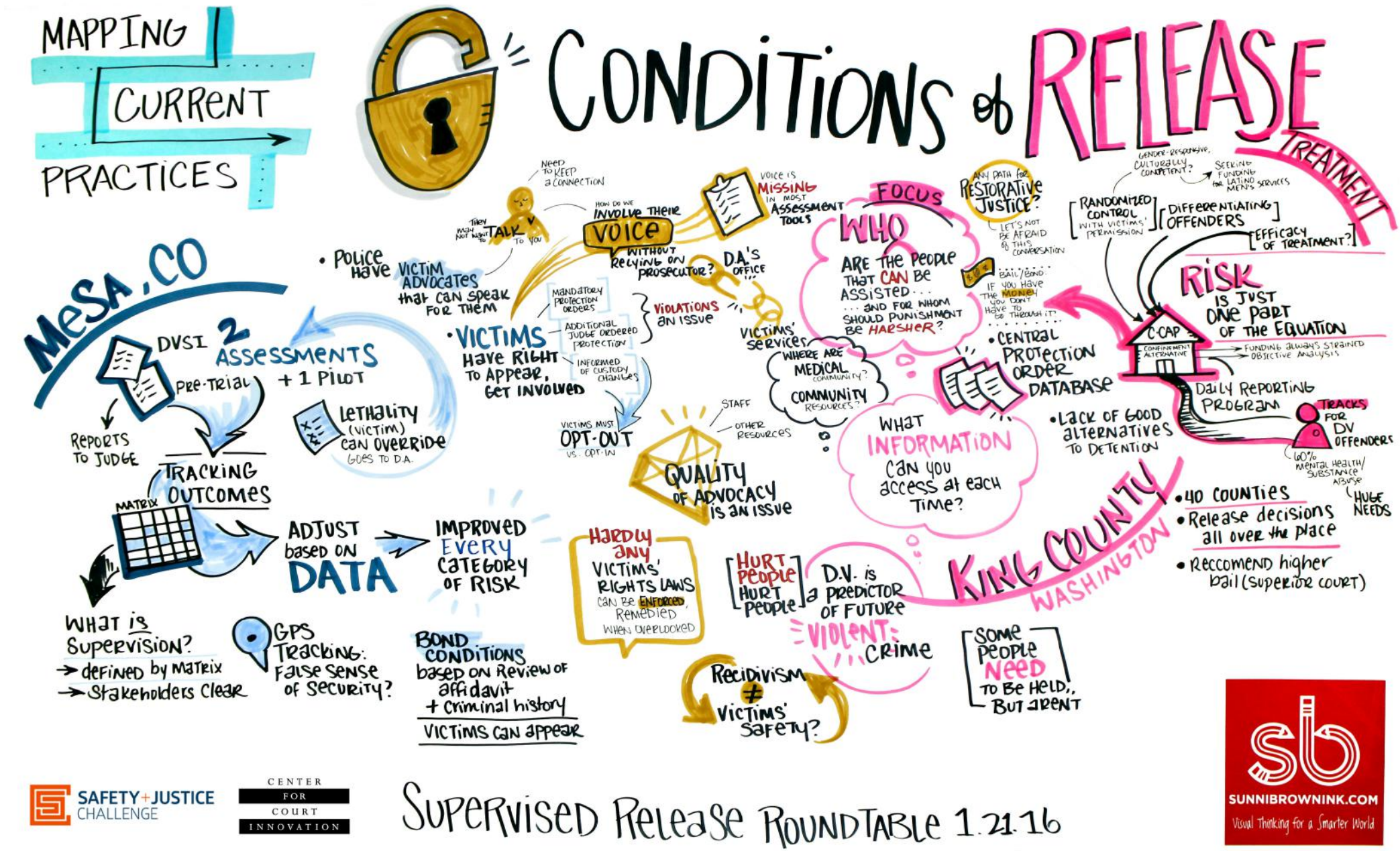
"These cases are routed to either a domestic violence detective or an assigned domestic violence officer. They will reach out try to talk to the accused, who is incarcerated, and with the victim. Having this contact provides a lot more information, a lot more accurate picture of what's going on. The prosecutor appearing before the court is going to have the information. They will often communicate the feeling of the victim, or the victim themselves will have the opportunity to stand up and tell the court what they wish to tell them, and then the judge is able to make a better decision about the particular facts and circumstances of the case and set the conditions in place. Nothing is more powerful for judges, for law enforcement, to sit there and listen to the victim tell them about why the experience was so traumatizing for them. I think that's the first step."

– Judge James Cawthon, Magistrate Judge, Ada County, Idaho

"I'm always somewhat concerned about who is sitting at the table and who is not sitting at the table. We have to make sure we are engaging these community-based organizations that we might not be familiar with, because we know the big ones. We have to make sure everybody is at the table. And some of us all sitting here don't always do the best job. We see the same people in the room."

– Audrey Moore, Manhattan District Attorney's Office, Special Victims Bureau

Figure 2. Roundtable participants' release discussion was captured using graphic recording.



MONITORING COMPLIANCE

Compliance monitoring is a core feature of any supervised release program – and it is crucial to ensuring victim safety. Roundtable participants expressed their support for building systems that are responsive to victims' safety concerns.

The following themes emerged in the discussion of compliance monitoring:

The need to reflect the idea of a "coordinated community response" in compliance monitoring. Both community-based and system-based stakeholders are critical to a coordinated community response to domestic violence. Roundtable participants reflected on the need to apply the coordinated community response framework to compliance monitoring.

> *"I'm going to talk to you about how we monitor the accused, in cases dealing with domestic violence, sexual assault, stalking…We reached a decision that we would do it by emphasizing the entire system's response in these cases. It's what I call a community response. Pretrial services is going to work in conjunction with the prosecutor's office and the local law enforcement agencies. We have two deputies, whose job it is to ride out and shadow offenders that…local law enforcement determine are of concern. Domestic violence defendants are different. They defy categories in these normal pretrial risk assessment tools. So you will see that they're not violating, but if you watch them, they're creeping within the restriction zones. They need a deputy to go out and say, 'Hey, I notice you're driving here and then you're driving here.' They need to know they're being watched."*
> **– Judge James Cawthon, Magistrate Judge, Ada County, Idaho**

> *"One of the cornerstones of violence against women is the idea of the community-coordinated response…The locus of it is the criminal justice system. How do we do it in a more victim-centered way? To me, that's involving the victim service folks in the DA's office, but then also the victim service providers."*
> **– Bea Hanson, Office on Violence Against Women**

> *"How do we connect … pretrial services to victims services? I've just seen the whole coordinated community response system, eroding in*

many communities and I think, it can't be a cookie cutter response. You have to look at what the different communities are. How do you figure out, in terms of addressing racial and ethnic disparities, how to bring folks to the table, whether it's a church or whether it's a neighborhood organization? I think it's going to depend on the community."
– Bea Hanson, Office on Violence Against Women

"DV cases are unique in terms of defendant and victim needs, and the criminal justice context. I've heard today about a few general supervisory tools used for this population pretrial across the country, but I think more innovation is still needed to develop tools that are specifically tailored to this unique context."
– Miriam Popper, NYC Mayor's Office on Criminal Justice

The need to incorporate victim safety into compliance monitoring. Roundtable participants discussed strategies for including victim safety in the plans for compliance monitoring.

"There ought to be multiple points in the system where a victim can relate safety concern information—especially if it's an immediacy type of thing. And the system has to be prepared to take action."
– Judge Roberto Cañas, Dallas County Criminal Court #10

"In my experience, working with many different kinds of victims, what all victims want is safety. And victims should be able to express safety concerns at every point in the system: at arrest, pre-arraignment, at bail setting…at arraignment, at sentencing, at a parole hearing. There should be a very known, very smooth and accessible way for victims to express a safety concern at any point in the system, and we don't have that now."
– Susan Herman, Deputy Commissioner of Collaborative Policing, NYPD

"It's really important for us to think about release and supervision and surveillance not as the panacea. It may not be popular in this room for me to say, but I do think it's important for us to construct new ideas and to do that in partnership with individuals who are personally affected by this. And there may be other opportunities for us to explore

what those might look like in those new spaces. There are a host of other ideas floating in communities about victimization, particularly of African-American women, who are disproportionately among the victimization group here, and who are really interested in exploring alternatives to incarceration."

– Monique Morris, National Black Women's Justice Institute

The need to carefully weigh the pros and cons of GPS monitoring. Participants discussed the ways in which GPS monitoring can be helpful or overly burdensome—and how it does, or does not, support victim safety.

"It sounds nice, but it can be misused, and I think in some cases it can put the victims in more danger because there's this imaginary thought that the GPS is going to somehow protect the victims. So we do GPS in Mesa, we haven't quit doing it. But we're constantly reminding judges and stakeholders that victims shouldn't think this is going to protect them."

– Joel Bishop, Mesa County Criminal Justice Services Department

"It's not a panacea, clearly. But this study that National Institute of Justice did, when victims were told, 'It's not a cure all'—they, in general, appreciated getting the information, knowing that there were exclusion zones, getting the notifications, et cetera, knowing that it wasn't foolproof."

– Mike Tobin, Wisconsin State Public Defender's Office

"I think we can overcome the issue of false sense of security for the victims by good information, involving victims in setting up those exclusion zones and providing better information to victims. I agree—not a panacea. But it does show some positive results, if the offender knows they're being monitored by the court."

– Kelly Dunne, Jeanne Geiger Crisis Center

The need for judges to respond meaningfully to noncompliance. Roundtable participants discussed the ways in which judges' responses to noncompliance matter, both for victim safety and for the message that is sent to defendants and the wider community about accountability

"From a judicial perspective, if you're going to put conditions on someone, the consequences are very, very important. And it can't just be optics, it can't just be what we say to victims, it can't just be a judge who will just say, 'Well, we've got to do better next time.' There's got to be some teeth to it."

– Judge Roberto Cañas, Dallas County Criminal Court #10

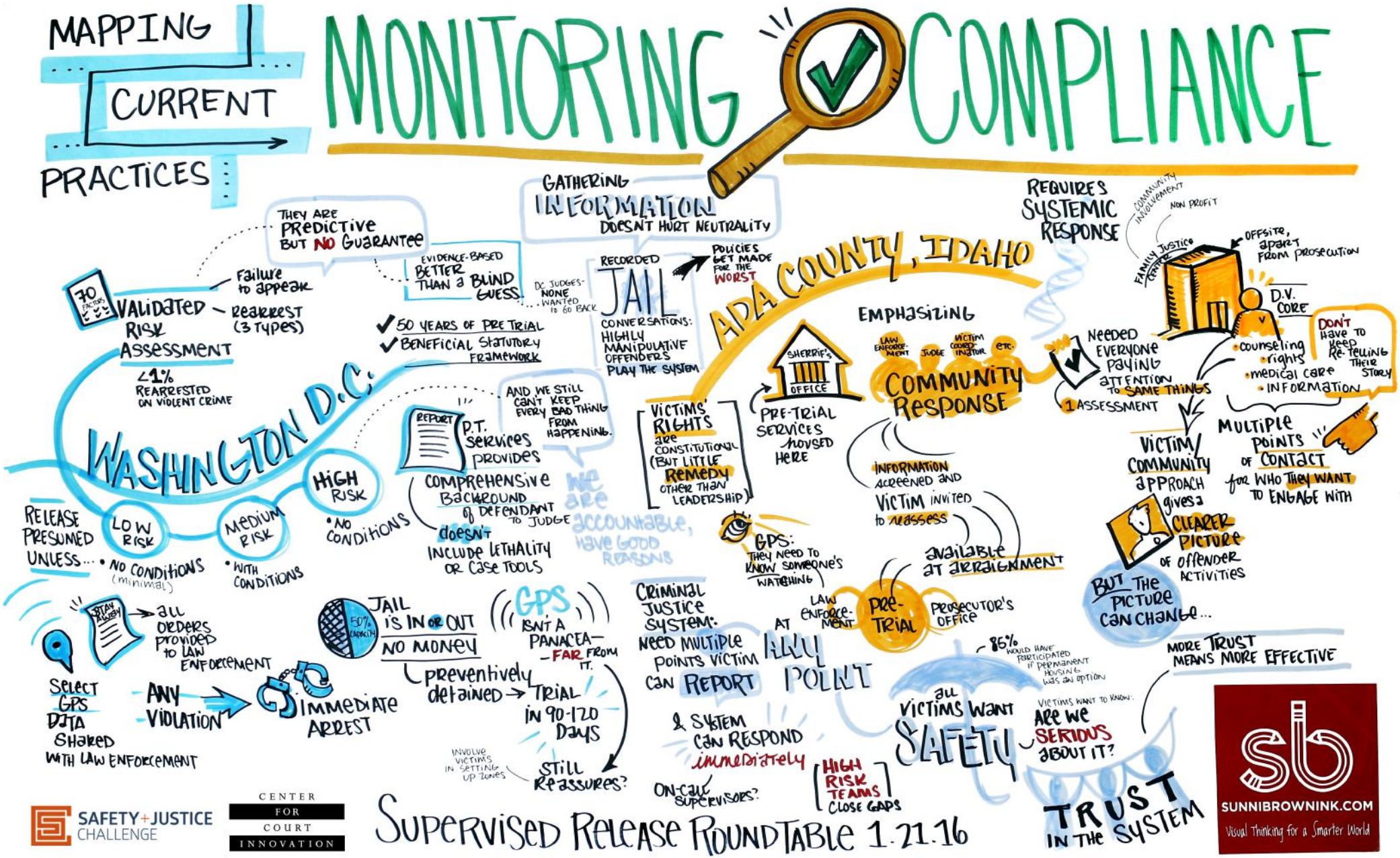
"The theme of our supervision is accountability. From the very beginning, judges say, 'You know what, defendant, there's a tradeoff. You are not being held, but in lieu of not being held, I am releasing you under these conditions … if you violate any of these conditions, there are going to be consequences.' And we think defendants pay attention to that. Because in D.C., any violation of any court-ordered release condition, including a stay away, is contempt of court. That can be an immediate arrest."

– Cliff Keenan, Pretrial Services Agency, D.C.

"A judge once said to me about sentencing in a criminal matter, it's not the severity of a sentence that poses a deterrent effect, it's the certainty of it. To the degree that somebody knows they're going to get caught or knows that a certain action is going to have a punishment associated with it, regardless of what the punishment is, they're going to be less likely to engage in the conduct.

– Judge Ronald Adrine, Cleveland Municipal Court

Figure 3. Roundtable participants' compliance discussion was captured using graphic recording.



CONCLUSION

Over the course of the daylong conversation, there was a palpable sense that we are living through a unique moment of possibility, a time of real momentum for criminal justice reform in general and jail reduction in particular.

Roundtable participants were eager to seize this moment. But they also highlighted a number of tensions that advocates of jail reduction and domestic violence prevention will need to navigate if they hope to improve victim safety and win community support.

Above all, there appeared to be a real appetite among jail reformers to figure out new ways to include victim voices, perspectives and concerns in creating and strengthening supervised release programs.

> *"Supervised release programs can present a unique opportunity. With the right tools – trained supervision staff, risk assessment tools, good interventions, and the right way to connect victims to services – we have the real potential to change the behavior of DV offenders. And help ensure victim safety. Victim advocates need to seize this opportunity. And pretrial services need to prioritize this issue and these defendants. They need to develop expertise and strong partnerships with victim advocates. They need to set high expectations for defendants. We have done this for defendants who abuse drugs or have mental health needs – combating domestic violence is a graver concern."*
>
> **— Courtney Bryan, Center for Court Innovation**

ABOUT THE CENTER FOR COURT INNOVATION

The Center for Court Innovation seeks to help create a more effective and humane justice system by designing and implementing operating programs, performing original research, and providing reformers around the world with the tools they need to launch new strategies.

Founded as a public/private partnership between the New York State Unified Court System and the Fund for the City of New York, the Center creates operating programs to test new ideas and solve problems. The center's projects include community-based violence prevention projects, alternatives to incarceration, re-entry initiatives, court-based programs that seek to promote positive individual and family change, and many others.

The center disseminates the lessons learned from innovative programs, helping justice reformers around the world launch new initiatives. The center also performs original research evaluating innovative programs to determine what works (and what doesn't).

The center has received numerous awards for its efforts, including the Peter F. Drucker Award for Non-Profit Innovation, the Innovations in American Government Award from Harvard University and the Ford Foundation, and the Prize for Public Sector Innovation from the Citizens Budget Commission.

For more information, please visit www.courtinnovation.org.

This report was created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails.

www.SafetyAndJusticeChallenge.org