Robert O. Varenik reviews common themes among pretrial detention reform efforts and the lessons that can be extracted from them.

Within the already fraught territory of criminal justice policy, issues of detention and punishment are particularly charged. The case of pretrial detention is further complicated because the affected population is not only often poor but transient, complex, and hard to document, or even describe. With consequently few advocates, their numbers are almost never measured precisely, although in many countries the pretrial population is significantly higher than the prison population. It is hard even to gauge the impact of any reform effort or the cause of a particular outcome. It comes as no surprise, then, that many societies have failed to take to heart the requirement of international law that detention of (presumptively innocent) accused persons should be the exception rather than the rule.

Despite the difficulties of the endeavor, there is a growing number of attempts to address pretrial detention policies. The reforms described in this volume include two significant legislative efforts (Chile and Russia); creation of a new administrative entity (South Africa); an administrative interagency reengineering (United States); and third-party efforts at inspection of or legal representation in detention venues (India and Malawi, and Nigeria, respectively). Have these initiatives mastered the difficult politics and the elusive metrics of this field? Do they signal any trustworthy directions for ensuring that the problems (and solutions) are properly appraised and appreciated? With these initiatives as a backdrop, this article suggests that reformers should focus on achieving clarity about the challenges they are tackling and the results they obtain, and on fashioning empirical arguments that appeal to a wider range of political values. The successes and setbacks found in these seven initiatives, diverse in contexts and content, point to this conclusion.

The accounts can be regrouped according to a few principal narratives that highlight the difficulties in managing both the politics and the metrics of pretrial detention reform. In a first group, including Chile, Russia, and South Africa, reform politics faltered, leading to a counter-reform that rolled back the laws, or in
the case of South Africa, meant a gradual administrative abandonment of the pilot project and the practices inculcated by the project. In India and Malawi, political support for two inspired initiatives appears to be significant and sustained, but reformers themselves express questions about how to interpret the results and their relation to the intervention. In two cases (Nigeria and the United States), reformers were able to generate value for official stakeholders. Believing that they had isolated the problem and could demonstrate the appropriateness of the approach and the desired impact, they were able to secure some institutional changes that seem likely to persist.

The political and technical underpinnings of success are often profoundly intertwined. One succinct recipe for successful reform calls for providing doers and decision makers with “information, options, and incentives.” That is, public officials need new knowledge that helps them make good choices and a set of political reasons to take action. Common experience in the field seems to suggest that the politics of reform—the key incentives—are paramount, making it a good place to start.

As Olga Schwartz relates, a liberalized criminal procedure code had long been stalled in the Russian Duma until an unlikely source, incoming President Vladimir Putin, pushed it through as an early salvo in (as hindsight now suggests) a long campaign to limit the influence of the judiciary and the legal establishment. Other political elites also supported these reforms, although for different reasons, including a desire at the time for greater proximity to the West and a way to address pressure from the Council of Europe and human rights activists regarding Russia’s record in this area. Law enforcement officials, especially prosecutors, were largely opposed to the reforms for institutional as well as ideological reasons. Keenly aware that the opportunities created by their unlikely coalition were highly evanescent, a small group of well-placed reform leaders adopted a very opportunistic approach, removing prosecutors and other opponents of the reform from the legislative working group in order to ensure rapid passage of a revised code.

Yet the experiences of Russia and also Chile suggest that identifying and even temporarily neutralizing opponents of reform may not be enough. Adversaries resurfaced, reinforced, in short order. In Russia, subsequent elections thinned the ranks of legislative reformers, while a suddenly indifferent presidency presided over a reconstituted working group that undermined some important elements of reform barely a year after their passage. Key reformers had been intent on a victory while there was a window of opportunity and opted to exclude opponents and shorten the time for debate rather than win them over or seek a lasting compromise. Because the other side hadn’t been converted to the cause or presented with a reason to forgo opposition, it did not; biding their time, opponents had the next, if not the last, word on reform. Ironically, it appears that the
counterreformers were aided by some of the “beneficiaries” of the new legislation. Judges were never really prepared for the new authority granted to them or the new standards for applying it, and after a brief honeymoon they reverted to form, their decisions mimicking those of the prosecution service which had previously determined pretrial detention or release.

The acid test of reform should not be what can be attained, but what can be sustained.

Given the inevitability of political shifts, the acid test of reform should not be what can be attained, but what can be sustained. Adversity, whether in the form of a public relations disaster stemming from a case gone bad or sharp tilts in the political balance, needs to be anticipated. When opponents of reform gained increased influence over the legislative process in Chile, supporters were caught unprepared to respond to what they viewed as demagoguery about increased impunity for criminals. Although fierce in their opposition to rollbacks, even the most ardent reformers lacked data to refute the charges because none of the system entities measured the impact of the reforms on detention, absconding, or recidivism. Some of the academics who had championed the initial reforms became a somewhat surprising constituency for counter-reform, arguing that concessions would be needed to avoid wholesale dismantling of the original project. As Verónica Venegas and Luis Vial point out, the use of consensus as a political modality for decision making may have masked simmering differences and lulled some players off their guard even in Chile, where deep schisms had historically divided the political camps. The ideological right remained ready to pounce on an opportunity, and did. Veterans of the Russian and Chilean campaigns might well advise that, as with electoral politics, the time to begin planning for the next skirmish is right after the initial victory.

Beyond the legislative level, the delicate courtship of parties in the reform process is equally critical. Working closely with several juvenile justice agencies, the Juvenile Detention Alternatives Initiative (JDAI) identified numerous sources of delay and inefficiency that contributed to an acknowledged growing problem of juvenile facility overcrowding in the United States. Lessons from past practice—for instance, never assume that related agencies know what the others are doing—prompted them to broker information in a way that made them, and the reform process, valuable to officials, who then benefitted from a host of low-cost solutions that relied on minor administrative changes rather than legislation. The Commonwealth Human Rights Initiative (CHRI) in India found that agency representatives who had traditionally been dismissive of input from NGOs reacted positively to CHRI’s often critical findings from its lay visits to detention sites. Dialogue, leavened by new information, can be
surprisingly fruitful.

In Malawi, filling the needs of the police force created an unlikely alliance and defused a potentially adversarial relationship. Reformers had been unable to win police cooperation until their nongovernmental Paralegal Advisory Service (PAS) project expanded to address juvenile detention, which the police had acknowledged as a problem area. Offering to assist the police and parents of juvenile arrestees, the PAS then helped develop a screening mechanism for diverting young offenders, where appropriate, out of the criminal justice process. In exchange, paralegals gained access to monitor police–detainee interviews. The PAS then went one better, recruiting officers to train paralegals in investigative interviewing techniques and custody procedures, which enhanced the paralegals’ monitoring skills while reinforcing the standards among police. The police also helped design the paralegals’ code of conduct for police station monitoring.

The PAS was forced into some difficult choices to forestall another political obstacle. Rather than risk further alienating the Malawi Law Society, which it correctly perceived as resentful of incursions into the Society’s traditional territory, the PAS demurred on several requests from the judiciary to send paralegals into the lower courts, championing the position that representation before a judge is strictly the Bar’s province.

Although political imperatives can frustrate the pursuit of evidence-based policy, empiricism has a role in making and sustaining political inroads. The implementation of pretrial release and detention policies is a high-volume undertaking well suited to data capture and analysis and offers opportunities to provide many system actors and policymakers with results that will make reform a better political deal for them. As D. Alan Henry puts it, once “armed with information” his U.S. JDAI team was ready to begin politicking for change. The Justice Initiative’s chief ally in an effort to implement liberalized pretrial release rules in Chihuahua, Mexico, turned out to be the state attorney general, who was explicit that pretrial release was not her office’s natural calling but who recognized that project-generated data provided strong arguments in favor of related reforms that law enforcement should support.

The subtle complexities of criminal justice systems require that reform should flow from careful diagnosis. The hunt for the source of the problem should approximate a mechanic’s approach under the hood of a car: try to isolate and observe different components in order to pinpoint the problem area(s) among many moving and interconnected parts. Reforms that spring fully formed, like Minerva from Jupiter’s brain, without gestation
Pretrial Detention

or significant research, may be both relevant and useful, but when the rationale for choosing a specific intervention is slender, the results may be correspondingly modest, and the mechanism of impact hard to divine.

Even due diligence does not inoculate against surprises. The PAS’s pre-project research in prisons revealed widespread, lengthy, and unlawful detention of inmates who lacked the legal knowledge and/or representation to challenge their status. However, a lack of reliable data made it hard to pinpoint where in the criminal process these phenomena had their roots. At its inception in 2000, the project targeted prison sites. Only after the project had been operating for two years was it discovered that the reform was aimed too far downstream: much of the pretrial detention problem stemmed from decisions made earlier in the prisoner intake process. By 2005 reformers were faced with results both mixed and hard to interpret: a small reduction (just under four percent) in the pretrial detainee population over six years, and a contemporaneous, massive 74 percent increase in the overall prison population.4 Happily, however, with an expanded cadre of paralegals focusing on gaining release of prisoners who had “overstayed” their remand period, scarcely 15 months later the number of remanded prisoners dropped an additional 18 percent. Going forward, reformers will have to address those problematic detentions stemming from decisions made earlier in the process.

CHRI’s program of lay visits to prisons in several Indian states clearly constitutes a useful intervention on several grounds: it mobilizes civil society, creates a crucial precedent for external oversight, and undoubtedly helps individuals who otherwise lack anyone to champion their rights. Yet for subsequent reformers trying to tackle pretrial detention across India, the true measure of its value may not be the four-year reduction in the number of pretrial detainees (although this appears to be significant) but rather the degree to which it enabled CHRI to prompt diverse stakeholders to probe a procedural and institutional thicket. Indeed, the project outstripped its aim of “opening up the obscure character of prison management through permitted community interventions” by discovering, as did its Malawian counterpart, the interconnected and mutually determined nature of the criminal justice system.

R.K. Saxena is skeptical of one-dimensional measures, aware that the “price of a reduction” in the pretrial population may be an increase in the number of convicts and the speed with which they are condemned. Looking back on this complexity, Saxena poses an invaluable question when he asks, “[what] would be a dependable indicator of reform in the situation of pretrial detention?”

By way of response, we might look to Malcolm Sparrow, a widely respect-
ed government innovations expert (and a former detective chief inspector in Britain) for a seemingly obvious but essential reminder: define your indicators before deciding on your intervention. Drawing up a plan of attack without a clear sense of the desired outcomes is an admission that we don’t know enough about the target to know exactly where to aim.

The uncertainty of our authors is not theirs alone, and their skepticism about the results is healthy for the field. Unfortunately, the world of pretrial detention is still cast in some darkness regarding the nature of success and how to measure it. The problem has diverse manifestations: excessive (too frequent and/or too lengthy) pretrial problems, discriminatory application, flaws in the process used for detention and release decisions, and inadequate physical conditions are the most common. But how do we define these problems quantitatively? How much is too much of a lawful, if ostensibly rare, measure? What do you compare it to? Although some policy experts have begun to articulate better standards of measurement, for most human rights groups, researchers and lawmakers, there is little choice but to utilize a core indicator—the percentage of the overall “in custody” population awaiting trial—that can be profoundly misleading for precisely the reasons our reformers suspected: it provides only a partial glimpse of a multifaceted picture.

In Mexico, to cite but one example, in the decade since 1995 the percentage of pretrial detainees among all inmates fell from 50 percent to 42 percent. This reduction took place despite a 75 percent increase, cited by Benjamin Naimark-Rowse and colleagues, in the number of people detained awaiting trial, because the overall size of the prison population more than doubled in the same period. Without contextualizing information, this indicator helps obscure the fact that Mexico has relied for decades on an inflexible legislative scheme, repeatedly toughened in the face of security fears, that renders perhaps two-thirds of all charged offenders ineligible for pretrial release.

So what might a measure of success in pretrial detention reform (or for that matter, a model of the problem) look like? What indicators would we look to, and which way would they be pointing (assuming that we are not limited to data that is typically recorded by governments and thus readily available)? To begin with, the numbers of people in detention (both before and after conviction) might each be compared to population size (and expressed in per capita terms) rather than comparing the two detainee groups to one another. In order to detect the possible effect of law enforcement activity, which might swing detainee populations up or down independently of how release or detention decisions are then made, those numbers might be also be compared to the number of arrests. Thus the rate at which suspects are held in detention might be expressed, for example, as two pretrial detainees per five arrests. (Care should be taken to control for other factors, such as high rates of juvenile or gang crimes, which,
as with “organized” crime generally, tend to receive higher rates of pretrial detention.) The median length of time someone spends in pretrial detention would also be a useful indicator. Tracking median times to disposition (a measure of the time it takes to resolve the case at the first instance level) would tell us if a significant speeding up of the judicial process was also at play and possibly a cause of a diminished pretrial detainee population.

Conviction rates, and a qualitative assessment of the process, from arrest through charging and arraignment (or its equivalents) and on to verdict, also could shed helpful light on the question of whether other changes in the way judges are handling cases might explain why the pretrial population may have appeared to shrink in comparison to the postjudgment pool. Of course, such studies of the diligence and fairness demonstrated by judges, prosecutors, and defense lawyers as the process unfolds would provide invaluable additional information on whether judges are actually changing the way they make pretrial release decisions, although the high volume of relevant incidents that we would want to evaluate might place some extraordinary demands on this sort of methodology. Thus, prima facie statistical evidence of a beneficial change without a corresponding cost might look like this: judges ordering pretrial detention at a slower rate, while other statistics hold steady. Going back to Sparrow’s injunction, with numerous indicators and the desired trend lines identified, one can proceed to consider specific interventions.

Of course, this might lead reformers to unsettling conclusions: that the most helpful and feasible approach is something unanticipated, or (worse) not part of their repertory—or even that there are many more critical fronts to this campaign than they had previously considered. Confronting this may pose a profound challenge on several levels to some actors. Like the proverbial man with just a hammer, organizations tend to see most problems as nails—apparently tailor-made for just the tools they have at hand. Admit that the problem derives from unexpected and/or diverse sources and you are obligated to consider that multiple approaches may be in order. If resources are limited, and the reform agenda not politically popular within the mainstream, individual reform groups may be hard-pressed to recruit new staff or partners capable of filling gaps in capacity.

However daunting the challenge of tailoring the response to carefully measured symptoms, it does not imply obsolescence for any of the activities described. Better representation at the pretrial stage might help marshal facts that could make release more common; defense lawyers could be well served by trained visitors to holding cells who can interview detainees to develop relevant favorable facts; appropriate legislative changes could, if faithfully implemented, directly attack a tendency to detain too readily. From this perspective, the interventions described in this volume might be reframed as useful probes, an initial phase in a better-informed, possibly broader effort at
measurable, sustainable change.

The important step of looking laterally at other experiences, not just for other tools but for a broader perspective on the dynamics of reform, seems to be difficult to take, or at least not typical. None of our accounts mentioned efforts in other countries, although it is not entirely clear what this indicates. The Justice Initiative certainly perceives a gap in the literature, which this volume is intended to help address. Would forging links between reformers in different places be difficult because diverse experience is not viewed as a terribly relevant source of ideas? Or would fostering the practice of checking for counterparts and advice from abroad be fruitful?

In fact, the range of experience discussed here usefully cautions us to rethink the instinct to divide policy and politics into separate concerns. Missed opportunities to measure (and then trumpet) policy impact are actually a symptom of a failure to identify the political points that might bolster or sway various constituencies. Indeed, the closer one looks at the individual situations, the more evident it becomes that the line we attempt to draw actually marks a broad interface rather than a division. What South African reformers might have seen as a technical problem—the incompatibility of their new pretrial services software with the emergent systems being rolled out by the Department of Justice and the courts—also reflected, as Louise Ehlers suggests, a missed opportunity to understand and play to the motivations of agencies that had just invested significant sums and precious time in their own information management. These agencies could have been a favorable audience for new information if it had been delivered in a way that enhanced, rather than competed with, their recent efforts.

Boiled down, the suggestion for advocates and reformers is to make the politics serve the policy and vice versa.

The suggestion for advocates and reformers is to make the politics serve the policy and vice versa. Data (e.g., the high or hidden costs of detention, the incidence of disease and violence affecting detainees still innocent in the eyes of the law) and analysis (e.g., the vast disparities in pretrial decisions that correlate with illegitimate factors like race or poverty) can enhance the justifications for reform or counter the opposition platform. Promoting a politics of economic efficiency can not only reframe the debate away from the traditional polarities of “hard” versus “soft” on crime but also encourage greater scrutiny of the real impact of policies that have no empirical foundation. Attending to both politics and policy, and acknowledging their interdependence, at least ensures the right posture for success, as it guarantees that reformers will be oriented toward the greatest potential problems and opportunities.
How would our reformers respond to this suggestion? One response might be that it is too dangerous to attempt in a policy arena characterized by far more demogugery than detail. The technocrat’s definition of success may be sublime in its nuanced complexity, but for precisely that reason—its lack of simplification—is ridiculously uninspiring as a political objective. Russian code reformers who conducted outreach among implementing agencies, only to have their opponents seize on the resulting feedback as the basis for undermining the reforms, might say that their political opportunity was both too valuable and too fragile to expose it up to a real dialogue. These are fair objections, and cannot be dispelled until someone has successfully piloted a synthetic approach and inspired others to follow (and validate) the way forward.

Is that feasible? The future challenge will lie in expanding the spectrum of “winning” issues. Only the account from the United States mentions the costs of incarceration, a potential trump card. To many, this will come as no surprise: in countries with high labor costs and arguably tougher rules on prison overcrowding, putting defendants in pretrial custody is more expensive than just about any alternative means of ensuring that defendants make it to trial without flight or further charges. Although some governments have actually invested in prisons as a down payment on a crude form of local economic development, jurisdictions with stagnant or sinking economies should be ripe for an examination of how overin- 
carceration is depriving the public of resources (although ensuring that the savings are actually redeployed to useful ends is another daunting battle). Some advocates of detention reform in the United States have turned to exposing the ways in which officials have tried to hide the costs of prison construction through privatized financing and the financial risks to the governments (and taxpayers) that have pledged to make good on defaults. 

In many countries, the marginal cost of an additional detainee is considered negligible, as labor costs are low, little public money is spent on food or other items for the inmates, and overcrowding does not generally prompt the building of new facilities. Even in countries with lower fixed costs, however, estimates of more indirect expense—lost employment, heightened exposure to disease and/or violence, and other expenses incurred by inmate families to help maintain their detained relative—can begin to look significant. If we stop to consider, as Martin Schönteich suggests, the spread of infectious diseases such as tuberculosis and AIDS among prisoners and by them to the general population upon release, the impact on families, business, the health care system, and the public coffers could dwarf other concerns about incarceration and soften resistance to reform.

In Mexico (with an officially estimated per capita prisoner cost of about one-fifth of that in the United States) the actual calculated public savings as a result of a modest bail supervision project in one Mexican state have proven a powerful incentive
for a neighboring state government to explore proposals designed to help lower historically high levels of pretrial detention. A forthcoming study of indirect costs of incarceration in Mexico should add an important new dimension to the debate there.

Marshaling comparative experience—a rich source of data—has political as well as technical value. The United States’ deserved reputation as “addicted to incarceration” might enhance the political value of examples of alternative approaches tried here. Because successful initiatives are universally attractive, politicians will characteristically be interested to learn what previously undetected advantages may have impelled others to embrace such experiments.

In some cases a more give-and-take approach to politics might provide an alternative to “winning” the policy debate. The most successful of our examples here all incorporated some element of this approach. We have noted above the PAS’s quid pro quo with the Malawi Law Society and D. Alan Henry’s account of the search for efficiencies he could offer to implementing agencies in the United States in order to bring them on board. In fact, an important commonality across the five best-sustained initiatives was a workable arrangement with agencies having some operational control over the subject matter. Even Nigeria’s project organizers, who enjoyed strong political support at high levels of government, were quick to seek formal collaborations with the police and obtain agreements with them at the precinct level.14 By contrast, the Chilean and Russian accounts of legislative efforts suggest that the agreements among different factions were tenuous or illusory and withered quickly. The chief advocates of Russian reform were not able to find ways to avoid key changes through compromise and instead witnessed rollbacks that, according to Olga Schwartz, sent a crucial signal that the legislature was once again favoring the prosecution—and detentions skyrocketed. (Ironically, some of Chile’s most influential reformers, lacking sufficient data to rebut the claims arising from the repeal factions, took a transactional approach in selling off parts of the pretrial detention reform in order to safeguard the larger re-engineering of Chilean criminal procedure.) South Africa’s pretrial services project, in many ways the brainchild of the justice minister, faltered because the frontline agencies were never properly incorporated and felt that the project’s primary currency—new information about cases and defendants—never came downstream to them in a usable form.

There are, of course, caveats. Even a battery of seemingly highly relevant statistics remains subject to multiple interpretations. Additionally, the public response to data can be unexpected. A 2002 survey of public attitudes in the United Kingdom regarding
the shockingly high cost of incarceration largely provoked calls to cut back on the prison “luxuries” that were presumed to be driving up expenditures. Finally, political marriages of convenience can become, without prior warning, inconvenient for one or both parties—witness Putin’s divestment from the reform movement of 2002.

Reform advocates can help counter negative influences by working with different messages and making sure that they are timely. Case studies about individual successes with alternatives to detention can be powerful vehicles for public education and particularly useful in the wake of unfortunate incidents that stoke fears about the dangers of liberalized treatment. Success in politics, partisan operatives remind us, is about crafting the right messages for shifting audiences. Having good information—better, at least, than that proffered by opponents of reform—should be a distinct advantage in bringing together numerous interests and producing collaborative actions.

The ambiguities touched on here and highlighted throughout this volume suggest there is much yet to be tried and learned and that future efforts should embody a rigor and sophistication equal to the complexity and sensitivity of the task. Even if the relationship of the reform impulse to politics—defined as the processes and calculations that determine stakeholder decisions whether to promote and/or implement change—is inevitably characterized by tensions, it should not be ignored. Good information is one critical tool for mediating these tensions, while allowing advocates to marshal political support, define appropriate interventions, and develop accurate and effective measures of impact.

Notes

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1. Pretrial detainees generally form a subset of the jail population, which in turn can include defendants detained awaiting trial; defendants who have been convicted already but are detained for a violation of their probation while they await trial on another offense; transferees from other facilities who have not been permanently assigned; and convicts serving relatively short sentences for misdemeanor-level crimes. When one considers the ever-changing nature of the population due to the relatively short-term stays (compared to post-conviction sentences) it becomes more apparent why it is extremely difficult even to isolate the pretrial detainee population for measurement.

2. This formulation comes from Christopher Stone of the Kennedy School of Government.

3. Another, more positive account of the Russian reforms avoids mention of the counterreform that followed. Lauding the tactics of the reformers for achieving something while circumstances permitted, the author notes that a more deliberate, less opportunist approach might not have yielded anything before the tide turned against reform. Matthew Spence, “The Complexity of Success in Russia” in Thomas Carothers, ed., Promoting the Rule of Law Abroad (Washington, D.C.: Carnegie Endowment for International Peace, 2006). It is clear however, that after initial significant decreases in pretrial detention, the numbers shot up dramatically after 2002. Statistics
from the Federal Enforcement Service actually indicate that the detention numbers were higher in 2005 than before the reform, although court data suggest they are still lower than prereform levels. See Olga Schwartz, “Ebb Tide: The Russian Reforms of 2001 and Their Reversal” on pp. 116-117 of this volume.

4. The project report provides statistics covering only the catchment area of the project.


6. See, for example, L. Bhansali and C. Biebesheimer, “Criminal Justice Reform in Latin America,” in Carothers, Promoting the Rule of Law Abroad (2006), 313-15. In a survey of results across Latin America, perhaps the world’s largest laboratory for criminal justice reforms, the authors draw upon figures from USAID, national governments, and UN and OAS-sponsored agencies mandated to study and compile data on criminal justice; for pretrial detention, this is the sole indicator cited. USAID’s technical guidance for its field personnel suggests that even this statistic represents a luxury, because outside Latin America many developing countries do not record much information about detainees. “Handbook of Human Rights and Governance Program Indicators” (Washington, D.C.: U.S. Agency for International Development, 1998), http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacc390.pdf.


8. In fact, as a proportion of the general population, pretrial detainees rose from 49 to 85 per 100,000 inhabitants in the decade after 1995.

9. In other words, fewer new pretrial detainees per arrest.

10. On the other end of the spectrum, Venegas and Vial point to an unusually high degree of consensus on pretrial detention reforms at the time Chile’s initial reforms were considered. This consensus resulted in there being virtually no debate on the issue, and reformers appeared unprepared for the fracturing of what they now view as an “unstable” coalition behind the reform. The consequent absence of crucial pretrial detention data to accurately gauge the impact of reform left advocates ill-positioned to stem the damage from the mushrooming partisan demagoguery about the new system’s “promoting criminal impunity.” For reformers there, a more disciplined approach to the technical aspects of policy might have been better politics.

11. Kevin Pranis, Doing Borrowed Time: The High Cost of Back-door Prison Finance (Brooklyn: Justice Strategies, 2006) (citing bond experts who warn that “[a] wave of private jail construction designed to spur economic development in the rural Southwest poses a growing risk to bondholders and the counties that stand behind the projects”).


13. A recent study commissioned by the Justice Initiative preliminarily put the total of direct and indirect marginal per diem costs in one state at about $50 per prisoner.

14. Subsequent events have since proved the utility of this approach. Despite significant turnover among allies of the project, the reforms have survived and prospered.

The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in the following priority areas: national criminal justice, international justice, freedom of information and expression, and equality and citizenship. Its offices are in Abuja, Budapest, and New York.

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