

TRANSCRIPT

"PRESUMPTION OF GUILT: THE GLOBAL OVERUSE OF PRETRIAL DETENTION"

A Conversation With Martin Schoenteich

Moderator: David Barry

* * *TRANSCRIBER'S NOTE: some names spelled phonetically.* * *

ANNOUNCER:

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DAVID BARRY:

Good afternoon. Welcome. Thank you for coming. Welcome to today's talk, *Presumption of Guilt: The Global Overuse of Pretrial Detention*, which conveniently enough is the title of this book. My name is David Barry. I work at the Open Society Justice Initiative. (NOISE) It's my great pleasure to introduce as today's speaker-- my Justice Initiative colleague-- and the author of the book, Martin Schoenteich. Martin, welcome back to New York.

MARTIN SCHOENTEICH:

Thank you.

DAVID BARRY:

Thank you for joining us today. Pretrial detention is a fascinating topic. One could happily spend years researching it, (APPLAUSE) I'm sure. But it's particularly compelling because it's so multi-faceted. So I guess as a way of beginning to explore

those many facets, I understand you have a short introductory video. So I guess what we'll do, please, is show the video first, then come back to you.

MARTIN SCHOENTEICH:

Uh-huh (AFFIRM).

DAVID BARRY:

If you would be kind enough to speak for maybe 15, 20 minutes or so. And then we'll open it up to questions.

MARTIN SCHOENTEICH:

Great.

DAVID BARRY:

Does that work?

MARTIN SCHOENTEICH:

Yes, that does.

DAVID BARRY:

Excellent.

MARTIN SCHOENTEICH:

Thank you very much, David. And you neglected to say that you were the-- the great and patient and persistent editor of the book. So I want to thank-- a word of thanks to you for that.

DAVID BARRY:

My pleasure.

MARTIN SCHOENTEICH:

So let me start with the animation. It's very brief. It's-- it's less than three minutes, but it draws out some of the more salient-- findings which are-- which are in the book. It gives a good overview of the book's findings. So here we go.

(PRE-RECORDED MATERIAL NOT TRANSCRIBED)

(BREAK IN TAPE)

MARTIN SCHOENTEICH:

Great. So let me just say-- I-- I won't be long. I'll spend about ten or 15 minutes just-- pointing out some of the-- the-- the issues which we-- we cover in the book. One of the reasons-- probably one of the important reasons why we started working on the issue of the excessive and arbitrary use of pretrial detention is that it-- it involves-- an important right, the right by a arrestee or a defendant to be presumed innocent-- until convicted or found guilty by a court of law.

Yet we know that this is a right which is violated widely and often. And it's interesting because it's a right which is broadly accepted in theory. If one engages in an argument with criminal justice officials, with policy makers and with others, most people profess fidelity to that right, but yet it's a right which is habitually and widely ignored or-- or flaunted in practice.

And it was quite surprising to us when we first started working on this issue that there's widespread ignorance around the world around the issue of the excessive use of-- of pretrial detention. Very few people are aware of the extent and the magnitude and the consequences of arbitrary and excessive pretrial detention practices.

So as a result-- we-- we wrote this book, which-- does a number of things. It-- it-- it tries to document the scale and the (NOISE) magnitude of the problem of pretrial detention around the world. It addresses or speaks to the causes, the underlying causes of why pretrial detention is used excessively and arbitrarily-- in many jurisdictions-- around the world.

We speak a lot about the consequences of pretrial detention, not only for the detainee themselves, him or herself, but also for their families, households, and communities and societies. And then finally, while of course it's all very well to document-- the negative consequences and-- the impacts of pretrial detention, we also spend-- a considerable amount of-- of time in the book writing about some good and innovative practices which have been developed and are-- are being developed around the world to try and mitigate-- the negative consequences and the excessive use of-- of pretrial detention.

So let me just highlight a few of-- of what I think are the more interesting findings in the book. And some of them were already addressed in-- in the animation. So the first point which I'd like to raise, and that's one which is useful to keep in mind when one speaks to policy makers and politicians in particular-- is to turn what is the

typical argument on its head.

The typical argument is that pretrial detention is-- is a good thing if I want to reduce crime and promote public security. And we believe that can-- one can in fact, on the basis of the evidence which-- which is available to us, actually (NOISE) argue the opposite, that the excessive use of pretrial detention actually undermines public security and safety.

And we say that for a number of reasons. Firstly, there's a lot of data and evidence to show that prison overcrowding significantly complicates the ability of corrections officials, of prison wardens to rehabilitate the prisoners in their care. These are convicted prisoners in their care.

But yet it is (NOISE) the excessive use of pretrial detention which significantly contributes to prison overcrowding around the world. So on a typical today, today for example, there are a bit over three million people who are in pretrial detention around the world. These are people who have been charged with an offense, they've been remanded into pretrial detention, but haven't yet been convicted of the charges-- which they are facing. So a little bit over three million.

And we also know that from extensive research done by the International Center for Prison Studies that prison systems around the world are overcrowded by about 1.5 million persons. So if one could reduce the number of pretrial detainees by half, one could, at least in principle and theory-- address prison crowding problems around the world.

Of course it's much easier said than done, but at least it's an interesting argument to make that pretrial detention significantly adds to the overcrowding burden which present systems face. The second reason why the excessive use of pretrial detention-- adds to public security concerns is that in many jurisdictions, especially in developing countries, pretrial detainees are not confined separately from convicted and sentenced prisoners.

So that means that people who are charged often with very minor offenses, stealing a chicken, a loaf of bread, or bicycle, are confined often in very close confined quarters or spaces with people who have often been convicted of quite serious violent offenses.

And that interaction not only encourages pretrial detainees to join gangs for their own protection, but it also has a criminogenic impact that people become criminalized, as it were, as a result of the interaction with-- with hardened and-- and convicted criminals.

And then a third point we make is that longer periods of pretrial detention, and I'll give you some figures in a moment about sort of the links of or duration of pretrial detention, obviously has an impact in the sense that it-- it leads to lost earnings by detainees themselves. It leads to broken homes and damaged communities.

All of these factors aggravate many of the underlying causes of crime and insecurity-- and-- and lack of safety in communities (NOISE) in-- in many parts of the world. So I think that's one strong argument which you like to present that one must be quite

careful not to over use pretrial detention because it can actually undermine public safety and security.

Related to that, we make the argument that the vast majority of pretrial detainees actually pose no or very little threat to-- to society. And the argument is made that individual detainees need to be confined awaiting trial because if they don't-- if they aren't confined, they will go out and intimidate witnesses, interfere with the investigation, or commit serious offenses.

But we found that worldwide many pretrial detainees are actually eventually released without ever standing trial because the systems are so dysfunctional that they're incapable of holding trials or are tried and-- and acquitted. Some are do-- are found guilty, but many of those who are found guilty and convicted are given a non-custodial sentence because the crimes-- for which they've been convicted of are fairly minor crimes and-- and offenses.

So in England and Wales, for example, a jurisdiction that uses pretrial detention actually relatively sparingly, and it's a fairly well-functioning criminal justice system, over half of all pretrial detainees in that jurisdiction are eventually acquitted or receive a non-custodial sentence because they were arrested and detained in the first place for fairly minor offenses.

And I think one can argue if that's the case in England and Wales, where there isn't much use made of pretrial detention, probably similar trends are to be found in other jurisdictions as well. And to the extent that data is available, that certainly bears out that point.

We then make the argument that while some pretrial detainees are only confined for a few days or weeks, in many cases these durations of pretrial detention extend into months and-- and even years. There is some research which was done by the Council of Europe in respect of its member states.

And (NOISE) the Council of Europe is comprised of countries which have got fairly well-resourced criminal justice systems. So generally speaking there are enough police officers, detectives, prosecutors, and courtrooms to process arrestees and pretrial detainees fairly quickly through the criminal justice process.

But even within the Council of Europe, the average duration of pretrial detention is-- is almost six months. It's almost-- almost half a year. And that's the average, so there are many pretrial detainees within these countries which are detained for-- for a longer duration than that.

Of course the other places where the criminal justice system isn't as well functioning or as well resourced, with a-- with a duration that's much longer. In Nigeria, for example, where the government's figures-- indicate that the average duration of pretrial detention is probably between three and 3 1/2 years. So the duration of pretrial detention is-- is excessively long.

And if one then uses that-- these figures, we don't have data for all the countries in the world about the duration of pretrial detention, but if we extrapolate, say, from the

Council of Europe's figures and a few other data points that are available to us, we conservatively estimate that the present cohort of 3.3 million pretrial detainees will collectively spend some 660 million days-- in pretrial detention.

So that's a tremendous waste of-- of human potential. The Empire State Building, for example, until recently one of-- the tallest building here in New York City, didn't even take a million person days-- to construct and build, but there's 660 million days which this present cohort of pretrial detainees will-- will spend in pretrial detention. And that obviously has significant consequences for not only the cost to states, but also to individuals and-- and societies.

A further point, and this came as-- as somewhat of a surprise to us, but-- as you'll see-- it-- it stands to reason, but there is a certain irony involved here, is that many jurisdictions treat pretrial detainees in a worse manner than they do convicted, sentenced-- convicted and sentenced prisoners.

So people who are presumed innocent, and indeed many of them are innocent, are treated obviously-- in-- in many cases in much more-- worse ways than-- than convicted offenders. And there are a number of reasons for that. One is that-- pretrial detainees are very often kept in police stations or in police lock-ups. And these simply are not facilities which have been designed to confine people for long periods of time.

Also in the minds of prison administrators-- pretrial detainees are seen as-- as a transient popu-- transient population-- even though in fact that's not often the case because the duration of pretrial detention is quite lengthy. But because of that mindset, because of that belief, many interventions, such as a provision of-- of house-- house treatment interventions-- the making the-- available educational opportunities or the ability of the prisoners to work, these kinds of opportunities are simply not made available to pretrial detainees.

As a result of that-- the level of boredom and frustration and anxiety amongst pretrial detainees is much higher than it is amongst sentenced prisoners. So sentenced prisoners are already much more likely to commit suicide, for example, than-- members of the general population in the countries in-- in which they are confined. But compared to sentenced prisoners, pretrial detainees are three times as likely to commit suicide-- according to the World Health Organization.

So clearly the kind of emotional and psychological impact of pretrial detention seems to be on average worse than that in respect of-- of sentenced prisoners. Of course in some places the-- the bad conditions also serve as an instrumental purpose. Prosecutors and police officers quite like the fact that the conditions of pretrial detention are not very good because it encourages pretrial detainees to plead guilty when otherwise they might not do so.

So we have a number of testimonies which we collected while compiling this book from-- pretrial detainees in Russia in particular who-- who conceded or-- or-- or confided in us that they pled guilty simply to be moved or transferred from a pretrial detention center, which are typically terribly overcrowded and the conditions are

very bad, to be placed in a prison for sentenced prisoners where there were work opportunities, educational opportunities, and conditions were generally better.

And then of course, more blatantly in-- in some jurisdictions, criminal justice officials, police officers, prosecutors as well, exert very real pressure, often really culminating in torture and abuse, to get pretrial detainees to-- to confess-- so as to avoid a lengthy and often costly and-- and intricate trial.

So the level of torture, or torture in itself, is disproportionately focused at the early stage of the criminal justice process, n-- normally within a few-- the first three days-- after somebody's been arrested an-- and detained.

Now the point I think-- which is important to make is that all these negative consequences-- of pretrial detention, while they obviously affect pretrial detainees, they-- they expand outwards as it were (UNINTEL), a bit like concentric circles, affecting initially the detainee-- detainee, but then his or her family, their households, and eventually their communities and societies.

So we drew on a lot of research which our partners, ourselves, and others did on-- on the socioeconomic consequences of pretrial detention. We did it-- have done it s-- already in three African-- in West African countries and similar research is underway in-- in southern and east Africa as well. (NOISE)

We-- we interviewed-- a sam-- a random sample of pretrial detainees and also members of their households to try and find out what were the real financial consequences of-- of their detention. And in many cases they were quite significant for-- for-- for two reasons. One obviously detainees in many cases earn an income. They're very often not formally employed, but they trade items at the market, they work on a subsistence farm generating some-- some items for the family or their household to eat.

But they're an important contributor to the economic well-being of their families and households. So the family with-- with-- withgoes or-- or loses that income or that productive contribution to the well-being of-- of the household unit.

But the household, in addition to that, also faces some very real costs, not only transport costs for members of that household to visit their detained relative, but also in many poorer, more impoverished countries, it's not the state that provides regular food and clothing and medication to detainees.

It's really up to the families and-- and their friends to be able to provide these kinds of basic necessities, which obviously is-- is quite costly to-- to households as well. And then in many places households-- also incur the costs of paying a bribe or paying for a lawyer or a barrister-- to try and alleviate-- the position of the-- their detained relative.

So these are just some of the-- the many consequences of pretrial detention. What are the underlying causes of-- of the excessive use of-- of-- of pretrial detention? And it's-- it's-- it's a bit of complicated topic to address because there are many and-- they vary from one jurisdiction to the next.

One problem which many countries face is that the laws are often quite imprecise or - or-- or fairly draconian. So there are a number of countries where there are often long schedules of offenses or lists of offenses for which pretrial release is-- is prohibited, in respect of which judges have to detain if somebody is a ch-- is charged with those offenses.

And as a result, police and prosecutors often charge people with much more serious crimes than what they were-- they-- they are even theoretically-- or potentially-- guilty of. Procedural factors also play a role in-- in the arbitrary or excessive use of pretrial detention. Normally the decision whether to detain somebody or release somebody awaiting trial is-- is taken within-- within a few minutes. (NOISE)

Studies have been in England in Wales, again a criminal justice system which is fairly effective and-- and efficient, and the typical time a judge takes to make a pretrial detention d-- ruling or decision is some two or three minutes. So there's hardly any applying of the mind by the judge in respect of the individual circumstances of the accused.

Public pressure, populous politicians who always tend to err on the side of caution obviously favor pretrial detention rather than pretrial release. And relatedly, the pressure which police and prosecutors and criminal justice officials exert not only on policy makers, but also on judges, to detain rather than release, it stands to reason from their point of view, for them it's always more favorable-- more convenient to have somebody in detention whom they can interrogate-- and respect of whom they can exert pressure-- rather than have them released and-- and-- and be-- be returned to the-- to the community.

Lack of coordination is a big problem in many criminal justice systems, that there's no coordination between the police that investigate the crime, the prosecution that then decides what kinds of offenses for which a person should be charged and prosecution, and the court administration more generally, so that a lot of bottlenecks or-- or-- or gaps within the criminal justice process slow down-- the speed with which pretrial detainees are processed throughout the system.

There are many other underlying causes, but I won't go into all of them now. They-- they-- they, I think, are documented quite well in the book. Though maybe just sort of the-- the-- the final chapter which-- which we then-- write about in the book is-- is-- all about the positive reforms which have occurred and are occurring around the world to try and-- and make pretrial detention practices a bit more rational and-- and a bit more effective-- not only-- only from the point of view of the criminal justice system, but also broader society.

And-- and we document many of these. In some countries, Finland and Singapore are two good examples, Germany also to a certain extent, which have really over the long term, over the last 20 or 30 years, consistently and over time reduced the number of pretrial detainees in their criminal justice system, where there's a considerable level of political will and consensus as well within the political systems in those countries to-- to bring this about.

Obviously that's not the case everywhere. There are many countries in the world where politicians and-- and political debates are-- are-- are very vigorous and so conscious of public security concerns that that consensus doesn't develop.

But notwithstanding that, there are other examples where often quite modest interventions which don't cost a lot of money but make use of-- of the resources which are available, which have been quite effective in get-- reducing the duration of pretrial detention and reducing the use, esp-- especially the arbitrary use of pretrial detention in their-- in their respective jurisdictions. And we can maybe speak about that a bit later on if-- if there's time.

So to conclude us (?), I want to make the point that even though we've now published a book and-- and a lot of our partners, a lot of the grantees of the Human Rights Initiative-- are-- are doing a lot of research on pretrial detention, we are only beginning to understand, to scratch the surface as it were, about the many and the varied consequences and underlying causes of the excessive and arbitrary use of pretrial detention around the world.

The book tries to address this-- and it's a lengthy book, so the point maybe is important to make that it can be-- can be read in sections. So if you're only interested in the-- the scale or the scope of pretrial detention around the world with lots of facts and figures-- looking at the global extent of pretrial detention and then narrowing down to regions and sub-regions of countries, then just look at that chapter.

If you are interested in the-- the consequences or the causes or the positive and effective interventions-- which have been introduced in a number of countries around the world, then you know, look at-- look-- look at those-- those chapters.

Maybe just to-- to end off, to-- to make the point that the information contained in the book has been drawn from a variety of sources, from our partners, from our colleagues, from grantees, from-- from Open Society Foundations, but also research that we-- we and-- and some of our colleagues did in the field, interviewing pretrial detainees, their family members, members of their households to try and go beyond the actual figures and data about pretrial detention, but to also try and show the human story or the human side of the consequences and-- and impact of pretrial detention.

So we like to believe it's a compelling, but long read. And-- I'd certainly encourage you to-- to at least glance at it and we would very much welcome your feedback over the coming weeks or-- or months. Thanks, David.

DAVID BARRY:

Excellent. Thank you, Martin. If I may, I'd like to invoke the moderator's privilege-- to ask the first question. And then I hope-- we'll open up to-- what I imagine will be a lot of different questions. So I mean I know a lot of us here at O.S.F. work on really complex, difficult, almost intractable problems.

But even within that universe-- pretrial detention stands out to me because, on the one hand, there's broad agreement that the presumption of innocence should be a universal norm-- yet on the other hand, as the book documents, about 15 million people a year suffer this particular form of rights abuse. So can you talk a little bit, please, about why is the overuse of pretrial detention just so intractable?

MARTIN SCHOENTEICH:

Uh-huh (AFFIRM). I mean one of the reasons, I think, is that it's-- the right not to be detained awaiting trial is not an absolute right. For many, I think even ourselves in-- in the human rights community, would concede that under certain carefully circumscribed-- circumstances or-- or-- or reasons, pretrial detention is justified.

If there's a genuine risk that a person who is suspected of having committed a serious offense, that he or she will flee, interfere with the administration of justice or the investigation, or commit a serious crime if they're not detained awaiting trial, then that's a justifiable reason. And provided the judge has looked at the individual case and circumstances of-- of that particular accused and comes to that conclusion, I think that's acceptable.

It's a question of balancing that interest, that sort of broader interest of the community to-- to-- to be safe from suspected offenders, to-- to be confident that criminal trials actually do proceed, that people don't abscond or inti-- or intimidate witnesses, to balance those interests and-- and those concerns with the right of the individual defendants, or a right to be presumed innocent and not to be detained unless very specific circumstances would-- would indicate that that should be the case.

And it's this balancing which is-- is, I think, a continually political battle in-- in most countries. It's not like the campaign to abolish the death penalty, for example, or to end mandatory minimum sentences. (UNINTEL) and provided the-- the-- that country has-- has a reasonably good system of governance, that's then the decision that's been made and-- and the battle has been won.

With pretrial detention or pretrial justice, it's a continuing balancing of these competing rights and interests. And it's a bit like a pendulum. It sort of swings in one direction and then it's the other-- over swings and then swings back. But I think what it does imply is that for people like ourselves who are working within the human fields, that it requires ongoing and-- and continuous vigilance.

And that's something which-- many donors and many academics, many practitioners-- are-- are not prepared to do. They don't simply have the patience and the persistence to engage in this-- this area for such a long period of time.

DAVID BARRY:

Interesting, thank you. Let's open it up to questions, please. Sheeva?

SHEEVA:

I have a question about the research process. So since you did spend a number of years on this project, did the data change over the years from basically when you started the research to today? Or did the data sort of stay the same, with the pattern sort of similar?

MARTIN SCHOENTEICH:

So I mean it-- it changed in the sense that at the beginning there was actually not much data. So when-- before we began and before Human Rights Initiative really started funding a lot of-- a lot of work, especially research and documentation, in this field, outside of maybe three or four countries, the U.S., the United Kingdom, and maybe one or two others, there was just very little information out there about the extent or the consequences of pretrial detention.

I mean hardly anybody even knew how many people were detained at any moment (NOISE) in time. And nobody had ever tried to calculate how many unique individuals circulate through the world's pretrial detention system over a typical year.

In respect of the consequences-- the socioeconomic consequences, torture, corruption, there-- there was very little literature. I mean there was literature for imprisoned persons generally, but these normally spoke about sentenced prisoners, not pretrial detainees as-- as a separate category. And the same also in respect of the underlying causes of over incarceration. A lot of literature on that as well, but very little of it focused specifically on pretrial detention.

And happily that's-- that's really changed. I mean just in Latin America on its own, I've (UNINTEL) two-- two feet worth of-- of books and reports and publications which have been produced on-- around the issue of-- of pretrial detention. The same increasingly so in Africa, in Europe as well.

So it's become-- becoming a growing field and that-- that, in a way, was our intention-- to ensure that academic-- academics, practitioners within criminal justice systems, and activists-- are prepared to devote at least part of their efforts, part of their careers to try and better understand what are the underlying causes and problems surrounding the arbitrary use of-- of pretrial detention.

DAVID BARRY:

So you're saying you're gonna write a follow-up? (LAUGHTER) No, but I do think-- I mean it's a great question because I think one of the most amazing things about the book is that there wasn't anything like it before. I think that's a really impressive part of this accomplishment. D.C., are there questions there for the moment? Or we can come back later. We'll come back.

FEMALE VOICE:

(UNINTEL) back row.

DAVID BARRY:

Oh, back row. Please, Sandy. (LAUGHTER)

SANDY:

Alright. (BACKGROUND VOICE) For-- my question-- sort of is from the premise that I-- I imagine in a lot of countries-- pretrial detention exists because the police and prosecutors know that they can't get the evidence-- that basically they're relying on confessions.

And so one question-- is there some rough proportionality between the length of pretrial detention and the severity of crimes? I know that there's outliers and that there are outrageous cases, but that's the first question. And secondly-- is there some effort to try to capacitate police investigation? Would that be one solution?

MARTIN SCHOENTEICH:

Uh-huh (AFFIRM). There isn't that much-- sophisticated data to say whether there is-- a general pattern, as-- as-- as you suggest, between the duration of pretrial detention and the seriousness of the charge-- facing the pretrial detainees.

In some countries that tends to be the case, but the-- the stronger correlation is normally in countries where money bail is used, in other words where judges say somebody can be released awaiting trial but provided they deposit a sum of money with the court, which is very typical especially in common law countries, but-- but even beyond those.

It's typically the-- the level of poverty-- which is a very strong indicator of whether somebody will be detained awaiting trial or not. So even though people are often typically in fact-- arrested and charged with very minor offenses and the amount of money bail set is often-- by our standards very small, say \$50 or-- or-- or \$30, in the context of somebody in-- in Africa or in Central America, these are-- are unaffordable amounts.

And as a result they are-- they are detained awaiting trial simply because they cannot find-- afford the money-- which-- which has been set in respect of money bail and even though the charges against them are-- are fairly minor. There are a few exceptions. So there are some countries, Nigeria is sort of a classical example, where people, if they're charged with very serious offenses such as armed robbery or murder for example, and these are offenses which cannot be tried by the lower courts, so they

can only be tried by the higher (UNINTEL) high or supreme court, but yet their first appearance for the bail application takes place at the lower court level or at the magistrates court.

And they cannot hear that bail application so they postpone it indefinitely, waiting or hoping that the investigation will be completed and that eventually the matter will then go to the high court. But it's in that indefinite postponement that many people await trial literally for-- for decades.

There-- there have been cases where people have been in pretrial detention for ten years or more. Eventually they're found again, but by that time witnesses have died and disappeared and-- and the trials actually never proceed-- proceed. So those are unusual jurisdictions where one has these kinds of special category of offenses.

And then, of course, there are those countries where there are these long schedules of offenses for which pretrial release is-- is completely prohibited. And these tend to be more serious offenses, but don't have to be. So stock theft, for example, in most Latin American countries pretrial release is-- is-- is prohibited, so pretrial detention is mandatory. So even though their offense might be-- be relatively minor.

MALE VOICE #2:

Is that cattle stealing?

MARTIN SCHOENTEICH:

Not only--
(OVERTALK)

MARTIN SCHOENTEICH:

Yeah, exactly.

MALE VOICE #2:

Not the stock market.

MARTIN SCHOENTEICH:

Yeah, yes, yes. (LAUGHTER) Would it help to capacitate the police? I mean certainly that-- that would be a pre-requisite. I mean you're quite right that in many jurisdictions the police and the prosecution know that if a fair trial is held, they

would hardly ever get a conviction, especially in more complex cases.

So the only way they get convictions is by getting conf-- a confession out of the-- the accused person. By giving them more resources, that would certainly help. But I would argue it's-- it's-- it's just a first step, that it's not enough, because once a culture has entrenched itself within a system, that torture and abuse-- brings results, it's very difficult to-- to weed out of-- out of a system.

Because even if you have the capacity and the resources, which you have for example in-- in the United States-- there is still always a temptation on the side of the police and-- and criminal justice officials to exert illegal pressure and to use torture because it's simply much more quicker to get a confession-- confession than go through a long and often quite costly-- trial process.

DAVID BARRY:

Teghan, you have a question, please?

TEGHAN:

Yeah. Thanks, Martin. This is amazing. It's so impressive. But over-- I was kind of following up on what Sheeva had asked. How has the research that you've done over this period of time affecting our own programming within the justice initiative and the foundations-- more broadly? Are we-- as a result are we channeling more funding to grantees dealing in public health and pretrial detention related issues? Or-- so I was just curious about that.

MARTIN SCHOENTEICH:

Okay. So I think-- I would like to believe-- but obviously I-- I have-- I have a personal interest in this thing that I've been working on this, on (UNINTEL) pretrial justice for many years. But I would like to believe that we've certainly widened the field of-- of persons and-- and-- and groups which are interested in-- in pretrial detention and pretrial justice.

So when-- when we and H.I. started working in this field, it was quite a narrow concern, people interested in penal issues and incarceration, but it was a small group of-- of individuals. By making the argument quite effectively that the excessive use of pretrial detention has an impact on public health, on socioeconomic development and poverty, on corruption, and on torture, we've been able to-- to raise the awareness and draw in people who are working in these related fields.

So the-- the number of allies which are now willing to work with us on pretrial detention issues is much larger than it was five or ten years ago. Also because the data is-- is-- is much more convincing than it was half a decade ago-- we can actually

put a dollar amount of-- of what financial consequences are as a result of the detention in a family in Sierra Leone, for example, or Mozambique or wherever the case might be.

That's an argument which is quite convincing to-- to donors, for example, who are interested in poverty reduction more broadly speaking if we can show to them that actually by them investing a bit more in pretrial detention or pretrial justice issues, they can accomplish their more broader goal of poverty reduction more effectively.

Also the figures that are-- or the data that is now available to us about the-- the number of pretrial detainees, that one out of every three prisoners in the world is awaiting trial or the finalization of their trial, is quite a convincing argument to make to states who spend a lot of money often in incarcerating-- awaiting trial detainees.

So in 2011, the E.U., for example, did a survey and they found that just 25 of the 27 member states at the time collectively spent \$18 billion a year just on confining pretrial detainees. And one can make the argument that, of course, there will always be a need for some pretrial deten-- detention, but if you could reduce it by, say, 30%, (UNINTEL) money could be used more effectively to-- to combat crime, employ more police officers and prosecutors-- crime prevention initiatives, or spend it on-- on some other public good such as health, education, or whatever the case might be.

So I think there's much greater awareness now than-- than there was before. It's more difficult for me to-- to speak to-- to what extent has O.S.S. (?) funding shifted as a result (UNINTEL). Certainly Human Rights Initiatives has engaged a lot over the last few years in-- in this field-- and is very active especially in Latin America and in Africa.

And we've got (UNINTEL) who-- could confirm hopefully I think that in-- in the era of public health certainly a few years ago there was a lot of collaboration as well between us and them around the issue of the public health impact and consequences and risks of-- of pretrial detainees.

DAVID BARRY:

Please.

QUESTION (FEMALE VOICE):

In the countries that you mentioned the-- where the-- (CLEARS THROAT) the pretrial detention is not as rampant and-- and they try to get prisoners-- either back to their homes-- is there any system in place that there is a consequence actually for the police or the courts? For instance, do they have to pay reparations if they detain someone without cause? And is that the reason why it works better? Or no?

MARTIN SCHOENTEICH:

Yeah, so-- there are a number of jurisdictions around the world where-- persons-- so there are two levels of reparations. The one level, the more generous one, is that if somebody is detained awaiting trial and then at the end of the trial they are acquitted, they're found not guilty-- those detainees are entitled to compensation, a certain amount per day of-- of-- of detention-- for example.

The less generous version, and-- and-- and-- and the more difficult to-- to show, to prove is where the detention was-- was arbitrary, where it wasn't done in the legally correct or procedurally correct manner. But-- the detainee then has to go to court and try and-- and show that and prove that, which many detainees just simply lack the wherewithal to do that or don't have the initiative or-- or the ability to-- to go to court.

The-- the problem is that in many places the-- the amounts of money are not very high. And-- many criminal justice systems are-- are quite centralized-- unlike in the U.S.-- and-- and a few exceptional cases. So where a local sheriff's office, for example, in-- in rural Alabama is fined \$50,000, for them that's a significant amount of money. They probably could employ-- sort of a sheriff deputy for-- for a whole year for that amount of money.

But where the criminal justice systems are centralized-- \$50,000 or \$5 million or even \$50 million-- isn't such a big figure in-- in the-- in the-- in the larger scheme of things. And because-- in most criminal justice systems, again, unlike in the U.S. where criminal justice officials are elected, these are civil service-- appointees, so they're unlikely to lose their jobs even if there's been some finding of wrongdoing unless there-- it's really shocking-- in its extent.

So while the compensation, of course, is good for the detainees, whether it exerts a lot of political pressure on-- on criminal justice officials and agencies to reform their ways-- I-- I have my doubts. I have my doubts.

DAVID BARRY:

Please.

NAOMI BURKE-SHYNE:

My name is Naomi Burke-Shyne and I work with (UNINTEL) in the public health program. Thank you very much for the presentation. It's really exciting to see the results of your research. I was just wondering about whether you saw any unique triggers or thematic approaches-- to alleviating or reducing pretrial detention.

For example, visiting our grantees on the coast of Kenya, they believe that-- 300 of the 1,000 people-- in pretrial detention are there on drug-related charges. And so we began to talk about whether if there was some sort of kind of lower-level power or

some sort of trigger that drug-related charges weren't automatically put into pretrial detention, it would drastically reduce the population quite quickly. I was wondering if your research kind of touched on any different angles for reducing numbers.

MARTIN SCHOENTEICH:

So, yes, I mean that certainly is an intervention, to just change your laws-- either decriminalize some-- some lower-level offenses (BACKGROUND VOICE) to begin with or at least not make-- pretrial detention mandatory-- for certain kinds of offenses. And drug offenses are-- are typically on that list of-- of offenses in-- in many Latin American countries.

So in-- in some places that certainly would make, I think, quite a big difference. The problem is often that there's also a fair amount of corruption in-- in-- in a number of criminal justice systems. So for the police it's a way to generate an income, by arresting a lot of people.

And they know very well-- everybody knows they will never stand trial. It's just arrest them, exert some pressure, and then hopefully a family member will come and-- and pay a bribe to get them out of the system. So I remember in-- in-- in Kenya, if-- if you just go around a room of our grantees, these are middle-class people-- who's ever been arrested by the police, 80% or 90% will put up their hand.

Virtually everybody's been arrested at-- at some stage in their lives, often multiple times, often on a Friday or towards the end of the month when the police has to generate an extra income. And not only for themselves, but also often for their commanding officers because they have to pay a fee to begin with to be employed by the police. I'm not saying this is the case in Kenya, but that's certainly the case in some countries. Because everybody knew full well that being a police officer is an income-generating activity.

If that's an additional factor, then changing the law or-- or tinkering with the number, the-- the kinds of offenses for which pretrial detention is applicable is just a first step. One then has to really address the underlying issue of-- of corruption. And-- and that's difficult.

Somebody asked me recently whether there are any success stories. I'm not aware of any in the pretrial detention field, but in Georgia, in Eastern Europe, the-- the uniform police and the patrol (?) police used to be extremely corrupt. And there was-- a moment, a political opportunity-- some ten years ago-- with-- after a kind of peaceful revolution, the new government just fired all the uniformed police officers, recruited ones, a quarter of the size of the initial size of the police force, paid them four times the salaries so that they didn't need to be corrupt.

And-- and were ruthless about corruption. Anybody who was, you know, suspected of corruption was immediately put on leave and prosecuted vigorously. So it's possible to-- to combat corruption as well, but it's more difficult-- especially once it's been engrained and entrenched within the criminal justice system.

DAVID BARRY:

Juanita, please.

JUANITA:

How do you convince the public option, which-- I mean for me I think this is the biggest problem. How do you-- as-- I mean-- make-- the people aware that this is (NOISE) actually a problem? And it brings, like, even worse things to the society that, you know, not detaining them.

MARTIN SCHOENTEICH:

Yeah, I mean--

(JUANITA: UNINTEL)

MARTIN SCHOENTEICH:

Yes. I mean I would-- that's-- there's no magic answer. One is, yes, I mean in some places like Kenya, for example, or in Malawi, where we found to our surprise because-- until-- until our partners-- did the research, we had no idea that in Malawi every year some two out of every 100 adults are actually arrested during a typical year.

And Malawi is not a place which is particularly corrupt or violent or abusive in terms of the police. So the argument, it could happen to you, is-- is certainly one that one can make in these countries where levels are arrest-- and pretrial detention are very high, that everybody potentially is at risk of being detained at some stage during their lives.

In other places where politically more influential persons, the upper classes and upper middle classes or middle classes are less at risk of being arrested and detained, it's-- it's more difficult because the argument is, well, it's gonna happen to somebody else. It's not my children who will be arrested and detained.

And I think there may be two approaches. One is to-- to-- to-- to try and bring out the human element, which-- which we tried to do in the book as well, that these are actually human beings and individuals who suffer very real consequences as a result of their detention.

And importantly not only they, themselves, because there might be very little sympathy for the detainees because many people think if you're detained, you're probably guilty anyway, but there are very real consequences for their-- for their families and households, for their minor children, for their aged parents, for their spouses-- who-- who clearly are-- are innocent-- to all intents and purposes.

So those kinds of human stories and-- and trying to elaborate on the consequences of

detention beyond the detainees is-- is one, I think, way of trying to influence public opinion. A second one is, and this is not for everybody, but is-- is through hard data. So we often face the argument by politicians and policy makers and-- and the general public-- more broadly is that, well, if-- if-- if we, as human rights defenders, if-- if we were to win the argument and it would result in-- in people being released even more so than they are today, and already now the present regime releases too many people and-- and aggravates public security problems in-- in-- in a specific country or jurisdiction.

But if we then ask in turn of the politician or the parliamentarian, well, show us the data that many pretrial detainees actually abscond or commit offenses whilst they are released awaiting trial, there simply is now data. This is just a myth. This is a-- a belief, a general belief. It-- it might even be true in some cases, but we simply don't know.

So a second approach to try and begin to influence maybe initially more elite opinion, but eventually also public opinion, is just to collect more reliable and better data. How many pretrial detainees actually do abscond? How many of them do commit a serious offense whilst they are awaiting trial at liberty?

And I think many people would be pleasantly surprised that the level of risk is-- is fairly minor, fairly-- fair-- fairly low. So information and data is important. And then, as I said early on, it's-- it's a long-term process. It's-- this is-- going to be a continuing struggle for as long as the present method of criminal justice system continues to exist or to operate.

Because even if we convince the present generation of-- of-- of the public, the next generation will have to be shown again that-- the excessive and arbitrary use of pretrial detention has a lot of negative consequences and should be used sparingly.

DAVID BARRY:

Yes.

QUESTION (FEMALE VOICE):

I was just wondering, as far as countries that are poorer countries, and I imagine a lot of the issues that come up with pretrial detention is related to a lot of other human rights issues, your right to an attorney, and the sort of torture till you get the confession could be remedied if the (NOISE) police have more resources to find evidence.

So can-- taking into consideration that a lot of this would require money and resources from the government, how do you sort of help resolve these-- these issues in a country that doesn't have the money and the resources or the willpower to allow for these other rights within pretrial detention?

MARTIN SCHOENTEICH:

So as-- as we show in the book, there are interventions which-- which can be quite cost effective. So the two which we've worked with quite intimately because it's-- it's one of the-- the focus countries where we try to experiment with come-- coming up with low-cost solutions.

And these are both in Africa, Malawi and Sierra Leone, both countries with very few lawyers. And Malawi's got-- a population of 16 million and maybe 300 lawyers. Sierra Leone, they've got about six million people and maybe 150 lawyers. So outside of the capital city, there are virtually no lawyers, certainly not working in the-- in the criminal justice field.

So with our partners there we've-- been promoting the use of paralegals. These are people with a high school education. They get some rudimentary training about the law and criminal procedure and then they assist both arrestees at the police station, but also detainees already at the court stage where people have been remanded into pretrial detention, both with some legal advice and then also in a very practical way, providing practical assistance.

The legal advice is useful because in many (NOISE) of these cases people are intimidated just appearing in court. They don't even know where to stand, who to address. They don't even often know that they have a right to ask for bail, what kinds of reasons I might give asking for bail and so forth. So the-- the legal advice is-- is helpful in itself.

But probably the-- the greatest help, and that's something that lawyers probably wouldn't give, it would-- would be just too expensive even in wealthier places, is that they-- these paralegals give practical assistance to arrestees and detainees. They normally have a bicycle or a motorbike, so they can go back into the villages, finding sureties or relatives of persons who have been arrested and detained to come to court and vouch for the detainee, that should they be released they-- they will stand in surety for those specific individuals.

If a case file is lost somewhere or is stuck on the prosecutor's desk or on a police detective's desk, the paralegals, because they've developed good relationships with criminal justice-- system operators, would them go and try and the case file or the docket to try and speed up the process.

They'll also facilitate bringing-- judicial officers to the prison to hold bail applications and to throw our cases where case files have been lost, for example, because that's very often the problem in-- in these kinds of countries. So these kinds of interventions are-- are cost effective and-- and make sense given the resource constraints of-- of those specific countries.

But allow me just other make maybe one-- one bigger point, and it's-- it's something that I think worries us a great deal, and that is there's certainly-- a pattern in the sense that-- poor countries don't have all that many pretrial detainees-- as-- as-- as-- as a rate to the general population.

But virtually all the prisoners in those countries are awaiting trial. So Nigeria would be one extreme example. Only about 20 out of every 100,000 people-- living in Nigeria are awaiting trial or pretrial detainees, compared to the global average of about 50 or 55. But typically between 2/3 and 3/4 of all prisoners in-- in-- in Nigeria are-- are awaiting trial or pretrial detainees.

In more developed and wealthier countries, it's the opposite. Rate of pretrial detention is higher, but the proportion of-- of pretrial detainees is-- is much lower. It's normally just about a fifth or-- or a third of all prisoners. And we fear that as countries become wealthier-- develop bigger or larger middle classes, as countries suddenly have enough resources to employ more police officers and respond to the rising demand of middle classes for greater security, because the middle classes have a greater and stronger political voice than the poor and they have more assets that they're fearful of losing to thieves and robbers and criminals-- that that trend towards greater economic growth and also more-- more democracy or democratization, where the government becomes more responsive to middle-class demands for greater public security could result-- in-- in large police forces.

And as a result of (UNINTEL) in the number of-- of pretrial detainees because a bottleneck then develops in these countries. They have a lot of police who are just suddenly employed by governments, but they don't have the courtrooms and the prosecutors and the judges to process all those individuals.

And this has been the trend in a number of countries which have democratized over the last 20 or 30 years and have seen an increase in the growth of-- of their middle classes. South Africa, Brazil, and a number of Eastern European countries who have seen a tremendous growth in the number and rate of-- of pretrial detainees.

And our concern is that at the moment-- Africa and-- South Asia, even though they comprise about half the world's population, have relatively few pretrial detainees. Maybe about 15%, 10% to 15% of the world's pretrial detainees are in these two regions of the world.

But as (NOISE) their economies continuing growing in those two regions, as the middle classes continue growing-- it's likely that we would see a significant increase in the number of pretrial detainees just in those-- these two regions, given that they are so disproportionately pop-- populous-- from a global perspective.

So if no interventions take place in Africa and South Asia, over the next 20 or 30 years we could see really a massive increase in the absolute number of pretrial detainees-- coming out of-- out of those two regions.

DAVID BARRY:

Colleagues in Washington D.C.? Any questions?

QUESTION (FEMALE VOICE):

Just to say that-- to just build on what Martin is saying, it's not like the rich countries are-- are doing-- criminal justice-- you know, processes much better. I mean the-- hey, Miguel (UNINTEL). (LAUGH) That's great to see grantees in the room as well.

But-- you know, Argentina, Latin-- Brazil, like you just said, Martin, they have lots of-- lots of resources. They have some of the worst prisons and some of the worst criminal justice systems. I mean Nikichi was just here, unfortunately she stepped out, but I mean you could ask her about the U.S. criminal justice system in detail and pretrial detention may not be the locus of the problem, but certainly resource rich places have not-- figured out how to make these systems work in rights respecting ways. So to echo Martin's point-- you know, more money and more resources don't necessarily create more rights respecting systems.

DAVID BARRY:

Okay, interesting, thank you. Denise.

DENISE:

So you spoke a little bit about the individual profit motive and corruption-- in creating this problem. And I know that at some point we had contemplating-- contemplated having-- a policy brief specifically on the issue of corruption. And we have also discussed at length-- the-- role of private prisons.

So I'm wondering if you have-- a comment on institutional corruption. So not just the individual bribe taking, but the institutional corruption that happens when you have an-- an instance when, like, in the United States, private prisons have a contract where they are-- they-- they have a number of people that they're-- that they are gonna have in their prisons and the government needs to find a way to fill that contract.

And that creates an institutional-- source of-- of pro-- a profit motive-- for having more pretrial detention and more different types of-- detention. So I-- I realize that perhaps the corruption paper is now off the table, but-- I'm wondering if-- doing research for the book, you have any further insight on other types of institutional corruption that contribute to the problem of pretrial detention.

MARTIN SCHOENTEICH:

So the-- the general-- I mean we have-- we have a paper on corruption, but we were also having to-- to-- to develop-- a monograph, a full research report which-- which we didn't-- which is unfortunate because I think that strong arguments can be made that the issue of corruption, to the extent that it does exist in criminal justice

systems, is probably also disproportionately-- focused at the early stage of the criminal justice process.

Because that's where most of the discretion lies. The police can decide whether to arrest somebody or not, if so, for what charges. The prosecution as well has a lot of discretion-- in many countries whether to prosecute or not, and if so, for what charges, and so forth.

The more institutional issue-- I mean private-- private-sector prisons are-- are-- are not that many. I mean the U.S. is a bit of an outlier where-- where a large-- large segment of the prisons stock (?) is-- is managed by private corporations or concerns.

You have it increasingly so in-- in Britain, or in England, in Wales in particular, but otherwise there aren't that many countries yet that have a large private sector-- prison industry. So they're probably not as powerful as they are in the U.S.

Also be the U.S. is so very much a federal system and very often these prisons, corporations for (NOISE) lack of a better word, are probably especially powerful at the local federal-- and-- I mean-- local and-- and state level, which probably wouldn't be the case in the countries where you have a more unitary system, where the national government has much clout and power and is not as easily swayed and influenced-- by-- by private-sector interests.

It's-- it's difficult to say to what extent the fact that many prisons are-- are managed by private corporates have an impact on-- on pretrial detention in the U.S. because, depending as to how you look at it-- the-- the U.S. either performs very badly or quite well in respect to pretrial detention.

So in the U.S. only every-- only every fifth prisoner is a pretrial detainee, which is significantly below the global average or one out of three or $1/3$. Also the duration of pretrial detention tends to be relatively short in the U.S. It's normally between 20 and 40 days-- although recent data is not available. But that's because the system is quite efficient. You have plea bargaining and you have-- a variety of interventions to speed-- to speed the-- the-- the system or the-- the process along.

But if one looks at the number of pretrial detainees as a rate to the general population, it's very high in the U.S. It's-- I-- I even wrote it down. It's 140 per 100,000 compared to the global average of about a 50-- about 50. So that's about three times the global average. But this partly a consequence because so many people are arrested and so many people are also s-- imprisoned as convicted prisoners in the U.S.

It's difficult to disaggregate that tendency to imprison more generally from the use of pretrial detention and what impact the private sector prison corporations have-- have on that. So it's a long way of saying that I-- I-- I just don't know-- (LAUGHTER) to what effect.

DENISE:

And I was using the private prisons at just one example of institutions that can corrupt, but I would also be interested in looking at obviously-- police unions and just different types of institutions that just contribute to-- to this problem. But I don't know, maybe the corruption policy paper can still be forthcoming.
(LAUGHTER)

DAVID BARRY:

Any other final burning questions? Madeleine, please.

MADELEINE:

I'm sorry, Martin, it's a trick question. You and I recently met with a representative of the law enforcement community who objected to the animation-- because he said that showing police officers hitting a defendant-- would be objectionable to the law enforcement community. What's your response? (LAUGHTER)

MARTIN SCHOENTEICH:

I mean as-- as you responded at the time, I mean (LAUGHTER) one is that it-- it happens-- (BACKGROUND VOICE) all the time. And I think more seasoned law enforcement officials would-- would know that instinctively, that that's-- that that's the case in many criminal justice systems, in many police departments around the world.

Having said that, yes, I mean if-- if that animation had been designed specifically with law enforcement officials in mind, maybe that short segment should-- should not be excluded-- in-- included because it unnecessarily-- shifts the debate from-- from an issue which is-- which is core to the-- to the broader animation. So one can quibble about that, whether one would want to focus on that or not.

But I think for us-- looking at the bigger picture and trying to draw in a lot of allies-- around our campaign-- around pretrial justice-- there is-- is a big community out there which is interested in torture broadly speaking, but also torture within the criminal justice context.

And I think having those as allies is-- is quite important to us. And to make the argument that people are tortured in some jurisdictions whilst awaiting trial-- is-- is a strong one to make even though it might be obvious in many cases. But certainly our particular argument that it's disproportionately focused within the first few hours or days of arrest is politically quite-- quite useful for us to make. But--

MADELEINE:

Yeah, and it speaks to emotions.

MARTIN SCHOENTEICH:

Yeah. But I'm pragmatic enough to-- to happily cut out that three seconds (LAUGHTER) if it is necessarily to-- to get police officers on our side.

DAVID BARRY:

Excellent. Thank you. Thank you all for joining us today. Thank you, Martin. Congratulations again (APPLAUSE) on the book.

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