

## Incarceration and Injustice Addressed at Najarian Talk

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*From left, Cherise Fanno Burdeen, Middlesex Sheriff Peter Koutoujian and Marc A. Levin (Sara Janjigian Trifiro photo)*

BOSTON — The annual K. George and Dr. Carolann S. Najarian Lecture on Human Rights, held at Faneuil Hall, this year addressed a human rights topic in the US, rather than the world, and the human rights were those of the incarcerated.

The program, held on November 14, featured two experts on the justice system from Texas, Cherise Fanno Burdeen and Marc A. Levin, who sat on a panel moderated by Middlesex Sheriff Peter Koutoujian.

Fanno Burdeen is the chief executive officer of the Pretrial Justice Institute and Levin is the vice president of criminal justice at the Texas Public Policy Foundation and Right on Crime.



Sheriff Peter Koutoujian

The two, along with Koutoujian, spoke about pretrial detention for those arrested and its systematic ties to issues of race and class.

Opening the program was Dr. Carolann Najarian, who recited several striking statistics: the US, she said, with 5 percent of the world's population, accounts for 25 percent of the world's incarcerated population. In fact, she said, the country has the highest rate of incarceration in the developed world. Within the US, Oklahoma is the state with the highest rate of pretrial detention and Massachusetts the lowest. Panelist Levin noted later in the program that as well as Massachusetts is doing, Canada's numbers are half that of the state.

### **Pretrial Detention**

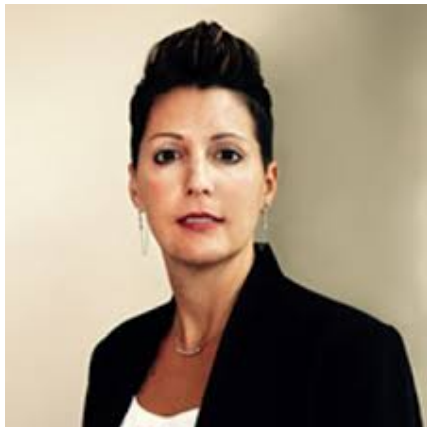
Koutoujian explained that lest the audience think that the panel is asking for lenience in sentencing, the discussion was about pretrial detention, meaning those that have been charged with a crime and are legally considered innocent of that crime, in the period before the adjudication of the case.

This talk addressed issues that are usually “put on the backburner” and affect people who are often disregarded because of their status, he noted.

“No one should be set aside in our society for their status,” he stressed.

“There is no partisanship to it. It protects our communities, protects human dignity and saves money also,” Koutoujian said.

Usually bail is set as a condition to return to face the charges after an arrest. Fanno Burdeen explained, “Bail is the contract between the court and someone. It says these are the conditions you must abide by to be released and then come back to court. Money bond is one of those elements. One of the things Mark and I have partnered on is that the majority of the people who will come to court and not get rearrested do not need to be in jail for months awaiting a trial, during which time if they had a job they would lose it,” have their housing destabilized and affect their families.



Cherise Fanno Burdeen

Said Fanno Burdeen, “Employment, stable housing and good connections with families [are] the

“The most important thing in pretrial justice is constitutional rights: the presumption of innocence, equal protection and due process,” Levin added.

Comprehensive criminal justice reforms passed last year, Koutoujian noted. “However significant gaps in our system remain. Gaps into which people, disproportionately men of color, fall into and never climb back out of,” he said.

The numbers are stark reminders of what is going on in society today, he said, in terms of race.

“Pretrial services have long been a secondary consideration even in the criminal justice community,” he said. However, nearly 500,000 are held every day as part of pretrial detention.

More starkly, he said, according to the Pretrial Justice Institute which Fanno Burdeen leads, 65 percent of the US jail population is “awaiting a court charge.”

The two panelists agreed that money is the root of the problem for those remanded before trial.

Bail, set anywhere from \$100 to \$1 million, is often a reason for people to stay in jail as they cannot afford to pay it.

### **Texas Leading in Reforms**

At the moment, Texas is “a state whose reforms in the last decades have earned it national recognition,” he said. The state, he added, “Stepped it up way more than most other states.”

In 2005, the president of a think tank, Texas Public Policy Foundation, asked Levin to take part in a study to see why the state of Texas was building so many prisons and still running out of room, “spending a fortune and not getting a commensurate public safety return on that investment.”

He started looking into what could be done differently.



Marc A. Levin

The turning point was in 2007, when another agency projected that another 17,000 prison beds would be needed by 2012. He said he and his group convinced then-governor Rick Perry to instead consider measures that would reduce the prison population in the first place rather than just build prisons. “We were able to craft a justice reinvestment plan, \$241 million to expand those facilities,” and even closed eight prisons in addition to not building any new ones.

“In 2010 I had the idea for Right on Crime,” as interest increased across the country, Levin said. Newt Gingrich and Jeb Bush are supporters of this conservative approach to prison reform.

“The goal of our effort is to redefine what it means to be a conservative on criminal justice, take it back to constitutional rights and limited government,” he said.

In addition to political conservatives, many of the leaders in this effort have been religious leaders, believing in “redemption,” Levin said.

The panelists agreed that major opposition to reform comes from professional bond holders who make money on the backs of the poor or those who do not have enough money to pay for bail.

“I am having to go to a commercial bondsman and they will post on my behalf and I will give the bondsman 10 percent even if I am innocent,” Levin said.

Interestingly, the panel said that the only other country that has commercial bail in addition to the US is the Philippines.

The idea of making release based on financial status is an incorrect path, they argued. “The most significant finding is that most people released return on their own recognizance. And a lot of people should be dealt with police diversion [programs addressing issues those arrested are facing, such as drug programs]. How much money you have has nothing to do with whether you will commit another offense,” Levin said.

“Most people would have trouble coming up with \$400 in cash. For the vast majority of people it is,” she said. “We’re paying \$150 a day because you can’t pay \$400.”

“It is stunning when you see some of these operations. Stunning to see how much money they are making off the backs of people who are too poor to get out of jail,” Koutoujian said.

There are no bail bondsmen in Massachusetts, the panel said. “The number one thing we need to correct is making sure you don’t make a decision on the ability to pay but rather on public safety,” Levin said. There is a “very small category” of people who should be denied bail for a variety of reasons.

Violent people can be flagged. “There is a small segment of people to whom we can deny bail.” “If you have someone that you determine is dangerous, he can be held without bail,” Koutoujian said.

### **Addressing Roots of Arrests**

Drugs, mental health issues and homelessness are all contributing factors to arrests. Those, Levin said, should be addressed by means other than stays in jail before trial.

“We have prosecutors who say if they [those charged] get treatment for their issue, then we are not going to prosecute the case,” Levin said.

In addition, Levin said that research supported by the Arnold Foundation shows that when those arrested are detained for even short periods before trial, they will have higher rates of engaging in new criminal activity.

Fanno Burdeen added, that for those with mental illness or drug abuse problems, jail is “a very harsh environment. The smells, the noise, the sounds, just the environment of the jail are very damaging to people with mental illness.”

In pretrial, prisoners don’t get programming nor earned time. “You come out worse,” Koutoujian said.

Half the people arrested in Middlesex County have mental health or addiction problems, Koutoujian said.

The average length of pretrial stay is two months, but it can even last up to a year, or even years, pending trial, Fanno Burdeen said.

“Unlike some of the more complicated criminal justice reforms we try to negotiate with policymakers, the fix for these issues is relatively common sense and relatively simple,” she said.

Levin praised the recent federal criminal justice reform, titled The First Step, and signed by President Trump.

Another new development that Najarian spoke about was a collaboration between the Heritage Foundation and the Berklee School of Music to address inequity in criminal justice. Two students, Karen Yamaguchi and Brett Fairchild, sophomores at Berklee, performed an original song, Wake Up, about injustice in the justice system.

Koutoujian offered words of praise for the program. “This series and the Armenian Heritage Park Foundation assisting to putting it on, holds a very special place in my heart,” Koutoujian said, adding, “to Carolann and George, thank you, thank you, thank you, thank you, for making our world a better place. This series is very important for me because it is an opportunity for me to talk about larger, weighty issues affecting our society.”

The lecture program is endowed by George K. and Carolann S. Najarian, M.D. in honor of Dr. Najarian’s father, Avedis Albert Abrahamian.

A reception followed at the Bostonian Hotel.