COMMERCIAL BAIL BONDING: HOW IT WORKS

-SUMMARY OF FINAL REPORT-

APRIL 1986

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-Summary of Final Report-

by

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board for our ideas and helped increase our understanding of the ways bail bondsmen perform their jobs.

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CHAPTER I.

INTRODUCTION

A. Study Objectives and Scope

Historically, bail has been an important way of balancing defendants' rights to pretrial freedom and society's interests in securing appearance at trial. In general, the commercial bail bonding system is designed to work as follows: (1) the court sets the bond amount; (2) the defendant pays the bondsman a fee -- usually 10 percent of the face value of the bond -- to secure release pending trial; and (3) the bondsman guarantees that the defendant will appear for court or, if not, the bondsman will pay the court the full bond amount.

As protection against loss, the bondsman may require the defendant to post collateral or may insist that cosigners back the bond. Because of the risk of financial loss, the bondsman, it is assumed, will make every effort to assure the defendant's appearance in court. This includes locating defendants who flee ("skip-tracing") and returning them to court. To assist in these efforts, the laws of most jurisdictions grant bondsmen extensive powers with regard to arresting fugitives and returning them to court -- even if state lines must be crossed to do so.

Increased use of release on recognizance (R.O.R.) and legislative changes affecting bail have altered the role of bail bondsmen in the criminal justice system in recent years. Nevertheless, bondsmen continue to play a major role in the pretrial processing of defendants in many jurisdictions.

Despite the historical and, in most places, continuing importance of bail bondsmen as key actors in the criminal justice system, there has been little systematic analysis of their activities.[1] To remedy this situation, the National Institute of Justice (NIJ) of the U.S. Department of Justice commissioned the present study of the operations of the commercial bail bonding system.

This study does not deal with the issues of whether money bail or bail bondsmen <u>should</u> exist. Some individuals and organizations believe strongly that they should not. For example, the National Association of Pretrial Services Agencies (NAPSA) in its "Performance Standards for Pretrial Release" recommends that:

> The use of financial conditions of release should be eliminated. ...[The] practical advantages of nonfinancial release over the traditional money bail system, together with the successful use of nonfinancial pretrial release conditions as an effective method for assuring court appearances, support the elimination of money bail as a condition of release.[2]

Despite such recommendations, every jurisdiction in the nation uses some form of money bond,[3] as far as the authors of this study have been able to determine, and most jurisdictions use bondsmen as well. Hence, an analysis of bondsmen's activities seems both appropriate and necessary. This study, by providing such analysis, assumes that it is important for jurisdictions that use bail bondsmen to understand both the ways in which bondsmen operate and the ways in which bondsmen's activities are affected by the incentives and constraints that jurisdictions may establish.

To gain understanding of the bail bonding system's operations, we interviewed bondsmen, representatives of insurance companies that underwrite bail bonds, staff of agencies that regulate bail bonding, criminal justice officials, and persons advocating greater use of alternatives to money bail.

Additionally, six jurisdictions were selected for quantitative analysis, based on data collected from court records and, when possible, bondsmen's records as well. Supplemented by interviews with local criminal justice officials and bondsmen, the quantitative analysis provides considerable insight about the use of bond and the economics of bail bonding. The study team also surveyed state regulations regarding bonding, because of their impact on bondsmen's operations.

The various data collection efforts for this study were undertaken in 1980-81. Since then, a number of changes may have occurred in the practices reported for specific jurisdictions. However, in the authors' opinion, the overall findings for the bonding industry as a whole remain valid.

One major change that has occurred in the bonding industry since the completion of the study's data collection activities is that a national association of bondsmen has developed into a viable organization. The Professional Bondsmen of the United States (PBUS), which was just getting organized as this study began, has become an important vehicle -- along with its affiliated state associations -- for bondsmen to exchange information, lobby for legislative changes, sponsor research activities, and undertake efforts to "give the appearance bail bondsmen a better name."[4]

Despite the efforts of PBUS to publicize bondmen's activities, most persons -- even those who are generally well-informed about the workings of the criminal justice system -- still know very little about them. Although this study helps fill that knowledge gap, it should be viewed as <u>exploratory</u>, rather than definitive. Because of the relative lack of prior analysis of bondsmen's activities when this study began, there were many topics that deserved consideration; all could not be accommodated within the resource constraints of the study. For this reason, the study did not, for example, undertake a comparative analysis of commercial bail bonding vis-a-vis other pretrial release alternatives. Nor did it consider issues related to pretrial

crime.[5] Also excluded was the issue of possible corruption on the part of bail bondsmen.[6]

B. Organization of This Report

To understand the operations of the bail bonding system, this study assesses (1) the structure of the bonding industry and regulatory requirements on bondsmen; (2) the specific day-to-day activities of bondsmen; and (3) the results of a quantitative analysis of bonding activities in six jurisdictions. A key aspect of the analysis presented in the study considers bail bonding from an economic perspective. Bondsmen are seen to be businessmen seeking to maximize their profits, subject to a variety of constraints upon them. One result of this analysis is the identification of ways that the incentives and constraints facing bondsmen might be modified to encourage changes in their behavior. Thus, rather than viewing bail bonding as "evil" or "good," the study identifies the factors that influence bondsmen's behavior and assesses the likely results of changes in those factors.

Chapter II discusses the structure of the bonding industry and regulatory requirements on bondsmen. Chapter III discusses bondsmen's activities in detail, including their bond-writing decisions, followup with bonded defendants after release, and skip-tracing of persons who fail to appear for court. Chapter IV presents the results of a quantitative analysis of six jurisdictions: four (Fairfax, VA; Orlando, FL; Indianapolis, IN; and Memphis, TN) that were studied in detail and two (San Jose, CA; and Oklahoma City, OK) that were considered more briefly. The resulting analysis provides considerable insight about the bondsmen's role in the criminal justice system and the economics of bail bonding. The last chapter presents the major conclusions and recommendations of the study. A variety of suggestions are made concerning ways that bondsmen's activities can be channeled in the directions desired by a given jurisdiction. Additionally, that chapter suggests a number of topics that merit further consideration and debate.

CHAPTER II.

STRUCTURE AND REGULATION OF THE BONDING INDUSTRY

A. Structure of the Bonding Industry

At the retail level the bonding industry is dominated by small firms. However, many of these firms are affiliated with insurance companies. In such cases the individual bondsman pays a fee to the insurance company in exchange for writing bonds that have the ultimate backing of the company; the insurance company gives the bondsman its power of attorney to write bonds in its name. Besides this fee, the bondsman must also place a percentage of each bond premium in a "build-up fund." This fund, held in escrow for the bondsman, is designed to cover any unpaid forfeitures that might be outstanding if the bondsman's business were to fail. If the bondsman leaves the bonding business with no outstanding liabilities, the insurance company will return the build-up fund.

Many insurance companies operate their bail bond activities through general agents, who constitute a middle layer in the bonding industry between individual bondsmen and the insurance companies. Typically, general agents also receive a percentage of each bond premium. In return, they handle a variety of administrative matters for the insurance companies and the bondsmen. They may also share the liability for payment of bond forfeitures with the bondsmen (indeed, the insurance company may require its general agents to pay forfeitures, if their bondsmen do not). Thus, the general agent simplifies the insurance companies' operations and may help reduce their risk of financial loss as well.

Typically, 30-40 percent of the bond premiums of a bondsman backed by an insurance company will go to pay insurance company and general agent fees and to make required contributions to the build-up fund. Thus, if a bondsman charges premiums of 10 percent of the face value of the bond, approximately 6-7 percent of the face value of the bond will be available to support business operations. In return for payment of the fees, an "insurance" bondsman can usually write a virtually unlimited number of bonds.

Some bondsmen are not backed by insurance companies, but, rather, write bonds against their own resources. Depending on the state and the bondsmen's specific mode of operations, these bondsmen may be called "professional" bondsmen, "property" bondsmen or "cash" bondsmen. All have posted or pledged their own resources (e.g., real estate, cash, securities, etc.) with the jurisdiction and have been authorized to write bonds against those assets in an amount that depends on the size of the assets

(this amount may be a multiple of the resources' value or equal to it, depending on the jurisdiction). Thus, "professional" (or property or cash) bondsmen face limitations on the amount of their outstanding bonds from which insurance bondsmen are exempt. On the other hand, professional bondsmen retain the entire bond premium, while insurance bondsmen do not.

Although insurance companies play an important role in bail bonding, industry representatives note that the appropriate concept underlying bail bonding is suretyship, rather than insurance.[7] Major distinctions include:

- Insurance is a two-party contract between the insurer and insured, while a surety bond is a three-party contract among the principal (or obligor), obligee and surety. For bail bonds the principal is the defendant, who under the terms of the bond agrees to appear for court. The obligee is the court, which expects the defendant to perform the actions agreed to under the bond (i.e., to appear for court) and which can collect the bond amount if the defendant fails to do so. The surety is the bail bondsman, the party who guarantees the defendant's court appearance and becomes liable in the case of non-appearance.

- The purposes of insurance and suretyship differ. An insurance contract provides for payment to the insured for losses sustained. Under a surety bond the surety merely lends its name and credit to guarantee an obligation between the two parties.

- In insurance the insured (i.e., the party being protected) pays the premium. In suretyship the principal (i.e., the defendant for a bail bond) pays the bond premium, rather than the party being protected (i.e., the court for a bail bond).

- Losses are expected in insurance but not in suretyship. Rather than spreading the risk of loss from potential perils (e.g., fire, automobile accident, theft) across a broad base of policyholders as in insurance, suretyship assumes that all losses can be avoided, because losses occur only when a principal does not fulfill the promise made in the surety agreement.

- Collateral is not used under insurance contracts, where the insurance company simply reimburses the insured party for financial loss. Collateral is, however, important under suretyship, where the principal commonly promises to idemnify the surety for losses caused by the principal's failure to fulfill the promise made to the obligee.

- Insurance policies are written for a specific time period, while surety bonds are usually written for an indefinite term and stay in effect until the obligation has been fulfilled.[8]

Because of the many differences between suretyship and insurance, some researchers have concluded that bail bonding is more comparable to a lending institution than an insurance firm. The bondsman in effect loans the defendant the amount of the bond until the defendant's court case is settled and in return is paid a fee (comparable to payment of interest on a loan).[9]

Insurance companies that underwrite bail bonds usually specialize in that activity. Although no accurate data exist, there is widespread agreement that about a dozen insurance companies are very active bail bond underwriters, with an additional dozen or so firms having some bail bond activities.

Accurate estimates of the number of individual bondsmen or bonding companies are even harder to obtain, because of the high turnover rates within the industry, the many bondsmen who work part-time and the multiple names by which the same bonding agency may be known. The latter problem is compounded by mergers and sales of agencies; it is common for a new agency name to be added while the old one is retained, so that repeat business from former clients will not be lost.

DeRhoda estimated the number of individual bondsmen at about 5,000 and Davis, 4,000.[10] The present study found general agreement among representatives of the bonding industry that such estimates are "probably about right."

B. Regulation of Bail Bonding

Most states regulate bail bonding, either by statute or through administrative rules promulgated by state agencies. Although the National Association of Insurance Commissioners (NAIC) has drafted a "model statute" for regulation of bail bonding, only a few states have adopted this statute. As a result, the regulation of bail bonding varies considerably around the country and affects bondsmen's daily activities in diverse ways.

Information on the scope and content of state regulations was acquired from two sources. First, the laws governing bail bonding were reviewed for 34 states. Excluded from this review were states where bail bonding for profit is illegal (Kentucky and Wisconsin) or has become rare, because of the widespread

implementation of deposit bond (Illinois and Oregon). Also excluded were states with relatively small populations (e.g., Alaska, Wyoming, Maine).[11] The laws of each state studied were summarized, using a common outline for subjects to be covered.

The second source of regulatory information was state insurance commissioners. Because the state department of insurance is typically (though not always) the primary regulatory agency for bonding practices, these departments were asked to provide information on their regulatory policies. Although few states could answer all the questions asked, many states provided considerable insight about the local regulation of bail bondsmen. This information was collected in late 1979 and early 1980 and, consequently, the subsequent discussion reflects state situations at that time.

Regulatory Agencies

Although state insurance departments typically have regulatory authority over the bonding activities of at least the bondsmen who are agents of insurance companies, many of these departments have very little knowledge of bonding activities as a whole. There are several reasons for this. First, some states (e.g., Virginia) view bail bonding as simply one small aspect of the entire insurance industry and do not single it out for special attention. Second, in other states (e.g., Minnesota, Washington), where insurance departments regulate only the agents of insurance companies, many bondsmen (e.g., property or "professional" bondsmen) may be unaffiliated with such companies. Finally, some states (e.g., Missouri, Georgia) give the primary authority for regulating bail bondsmen to the local courts.

Extensive regulation of bail bonding by state insurance departments occurs in a number of states, including several that have many bondsmen. For example, in California (1,125 bondsmen), Florida (500 bondsmen), Indiana (260 bondsmen) and Oklahoma (385 bondsmen), the state insurance departments regulate all types of bondsmen and have detailed knowledge about the bonding industry within the state.

An unusual regulatory mechanism exists in Texas, where county bail bond boards have been established in counties of 110,000 or more population. Comprised of the sheriff, district attorney, representative of the bonding industry, and three judges (district judge, county judge or member of the commissioners court, and judge of a county court), the county bail bond board regulates bonding activities within the county. In smaller counties (i.e., those with less than 110,000 population), the county sheriffs have regulatory authority over bondsmen. The Texas State Board of Insurance has a relatively minor role in bonding regulation, consisting of regulating the insurance aspects

of activities of bondsmen who are affiliated with insurance companies.

Licensing of Bondsmen

States typically require bondsmen to be at least 18 years old (21 in some states) and to have been residents of the state for at least one year. Many states also impose limitations regarding prior criminal record. For example, Arizona and Indiana will not license anyone with a felony conviction; Arkansas and Mississippi exclude persons having a felony conviction within the last 10 years; the District of Columbia rejects persons with convictions for offenses involving moral turpitude; Florida requires restoration of civil rights before a license will be issued following a conviction; and New York will not allow bondsmen to have a prior criminal record of any kind.

A few states reported additional eligibility restrictions, such a having "good moral character" or meeting education/experience requirements. Florida has the most extensive education/experience requirements. Florida bondsmen must complete an 80-hour classroom course on bonding and meet one of the following criteria: completed approved correspondence course; worked as licensed runner for one year; worked full-time with a licensed agent, bondsman or insuror for one year; or had a general lines agent license for one year.

Besides these requirements, members of some professions are often forbidden from writing bail bonds. Common exclusions are attorneys, officials authorized to take bail, law enforcement officers and jailers or similar persons with custodial powers. Prohibitions against attorneys writing bonds are particularly frequent, although some states -- Texas is a notable example -- permit this.

Usually, a bondsman regulated by the state must pass an examination before receiving a license to write bail bonds. In some states (e.g., Massachusetts, Kansas, Virginia) this examination is the one taken by anyone seeking to become a licensed insurance agent. In such states, the examination may have few, if any, questions about bail bonding. Other states (e.g., California, Florida, Indiana) ask questions specific to bail bonding.

Licensing fees vary considerably around the country: for example, the annual license fee is $5 in Alabama, Iowa and New Mexico; $40 in New Jersey; $50 in Mississippi; and $350 in Indiana. In some states licensing fees are different for different types of bondsmen, with insurance bondsmen usually having lower fees. For example, Colorado charges professional bondsmen $200 a year and insurance bondsmen, $100. Such dual-fee systems were also reported for California, Connecticut, and Nevada.

Some states require bondsmen to demonstrate adequate financial capability for engaging in bail bonding and paying bond forfeitures that may be ordered. Typically, such financial requirements apply only to bondsmen who are not backed by insurance companies. For insurance bondsmen the insurance company's financial guarantee (often a posted bond) to the state is usually sufficient evidence of financial capability. Bond amounts required for property or professional bondsmen range from $5,000 (e.g., Arkansas) to $50,000 (e.g., Nevada). Three states reported financial requirements that vary with the bondsman's volume of business. In Colorado and Mississippi, bonds of $10,000 are required if 50 or more bonds are written; otherwise, a bond of only $5,000 must be posted. In North Carolina, a deposit with the State Insurance Department must equal one-eighth of all outstanding bonds (with a $5,000 minimum).

Most states with financial capability requirements provide for these funds to be used to cover unpaid forfeitures in local courts. Usually, when payments are made, bondsmen are not allowed to write additional bonds until the deposit has been replenished.

Reporting Requirements

Once licensed, bondsmen in many states (e.g., Florida, Tennessee) must file periodic reports with the regulatory agencies. However, some states (e.g., California, Nevada) require only that suitable records be maintained. Moreover, other states require reporting only from insurance companies, which typically do not provide separate information on their bail bonding activities.[12]

There are three broad types of reporting requirements. Some states require lists of each bond written, along with information about each one, such as the bond amount, premium amount, date of forfeiture, date of exoneration, etc. Other states are primarily concerned about tracking outstanding forfeitures and require data only on those bonds. Finally, many states require financial statements from bondsmen, particularly property or professional bondsmen. Usually, these financial reporting requirements are in addition to reporting requirements concerning bonding activity.

Restrictions on Bonding Practices

A variety of specific bonding practices are commonly limited by statute or administrative regulation. These include premium charges, outstanding bond amounts and payment of bond forfeitures.

Some states set statutory limits on bond premiums that can be charged. Other states set no such limits but require bondsmen (or their insurance companies) to have their rates

approved by the state insurance department. The most common limit on bond premiums is 10 percent of the face value of the bond. However, both North Carolina and Texas permit premium charges of 15 percent, and New York limits premium charges to five percent or less. Several states have a tiered system of premium charges, with the percentage rate decreasing as the bond increases. For example, Georgia permits a 10 percent charge on the first $500 of a bond but only five percent on any amount above $500. Arkansas, Connecticut, New York and Pennsylvania also have tiered systems, although the specific limitations are different.

The most common limitation on outstanding bonds is that professional or property bondsmen must be worth the amount of their outstanding bonds. Some states have more stringent requirements. For example, in Nebraska local property must be worth at least double the amount of the outstanding bonds.

Many states have statewide (rather than locally determined) policies regarding the payment of bond forfeitures. Typically, these rules specify the number of days within which a forfeiture must be paid; they may also discuss conditions under which a bondsman may be entitled to a refund (or partial refund) of a forfeited bond.

Time periods for payment of forfeitures vary considerably around the country, e.g., 10 days in such states as Arizona, Iowa and West Virginia and 180 days in California, Indiana and Tennessee. Some states specify time periods (usually one year) within which a defendant must be returned to court for the bondsman to be eligible for a refund of the forfeited bond.

Often the question of forfeiture reduction or refund is left to the discretion of the judge. However, in Texas, according to a law effective as of September 1981, bondsmen are to be remitted at least 95 percent of the forfeiture, if the defendant is returned within two years of final judgment as a result of money spent or information provided by bondsmen.

In addition to the restrictions discussed above, states commonly prohibit bondsmen from engaging in certain practices.[13] Besides general prohibitions against making material misstatements when obtaining a license and willfully failing to comply with bonding regulations, the most common activities forbidden to bondsmen are those listed "model statute" developed by the National Association of Insurance Commissioners.[14] These include recommending attorneys, soliciting business in jails or courthouses, and paying fees or rebates to jailers or other custodians.

Penalties

Several types of administrative penalties may be imposed on bondsmen by state regulatory agencies. Typically, these agencies are authorized to suspend or revoke bondsmen's licenses and to levy fines for violations of laws or adminstrative regulations concerning bonding. Additionally, several state insurance departments reported that bondsmen could be placed on probation or officially reprimanded for misconduct. Criminal penalties are also authorized in many states; usually, violation of the bonding laws is a misdemeanor, punishable by a fine of $500 or six months in jail or both.

Regulatory Agencies' Staff Levels and Self-Ratings

Typically, a few staff members at regulatory agencies spend part of their time regulating bail bonding. Only Indiana reported staff who worked on bail bond regulation on a full-time basis. The small staff allocation to bail bonding regulation helps explain the agencies' self-ratings of the extent of their activities and effectiveness regarding bail bonding. Only four states (Florida, Indiana, Montana and New York) reported that they considered themselves "very active" and "very effective" in the regulation of bail bonding.[15]

CHAPTER III.

THE ACTIVITIES OF BAIL BONDSMEN

A. Introduction

This chapter assesses bondsmen's day-to-day activities by considering their involvement in the pretrial process from initial contact with a defendant until liability on the bond ends. Most of the information about bondsmen's operations and their decision-making approaches was obtained from detailed interviews with bail bondsmen. Most of these bondsmen were located in the six sites selected for quantitative analysis (see Chapter IV), although some bondsmen from other jurisdictions were also interviewed, e.g., bondsmen who attended national conferences sponsored by the Professional Bondsmen of the United States (PBUS) and other groups.

Bondsmen were asked about the way they make bonding decisions, including the importance they place on collateral and cosigners for the bonds; the extent to which they maintain contact with defendants during the pretrial period; how they attempt to locate defendants who fail to appear for court; limitations imposed on their activities by state regulatory requirements, local courts or, where applicable, their sponsoring insurance companies; and other aspects of the bail bonding business.

Bondsmen typically reported long work-weeks, 40 to 80 hrs.[16] Moreover, some bondsmen commented that they consider themselves "on call" around-the-clock every day. This view is no doubt shared by many bondsmen, who may receive telephone calls at any hour from defendants seeking bonds.

We think the findings reported in this chapter are broadly applicable to bondsmen's activities in many areas. When these findings were discussed with bondsmen from other jurisdictions (e.g., bondsmen who attended PBUS' and other conferences), the typical response was that the practices described in this chapter are relatively common among bondsmen around the country.

Despite these assurances that the following discussion of bondsmen's activities applies to many bondsmen, there is no reason to assume that the practices described in this chapter apply to <u>all</u> bondsmen or to <u>all</u> jurisdictions. Indeed, one goal of this study is to present the range of activities that bondsmen may pursue under different circumstances and to assist pretrial policymakers in assessing the effects of various incentives and constraints on bondsmen's actions.

B. Initial Contact with Defendant

Figure 1 shows the various points at which bondsmen are involved in the pretrial process. This involvement begins when the defendant, or someone acting on behalf of the defendant (usually a relative or friend), contacts the bail bondsman. (As discussed in the previous chapter, bondsmen are usually forbidden from soliciting business directly at the jail and often are not allowed to engage in certain types of advertising.)

The most common form of advertising by bondsmen consists of placing ads in the yellow pages of telephone books. Bondsmen may have large ads, multiple ads (e.g., one for each bondsman in the agency and one for each agency name) and ads with photographs to try to catch the reader's attention. Ads often mention hours of business ("24-hour service"), location ("minutes away from the jail"), the number of years in business, the types of credit cards accepted and "confidential" service. Ads may also include "catchy phrases," such as "in jail, we bail"; "you ring, we spring"; or "you pay the fee, we set you free."

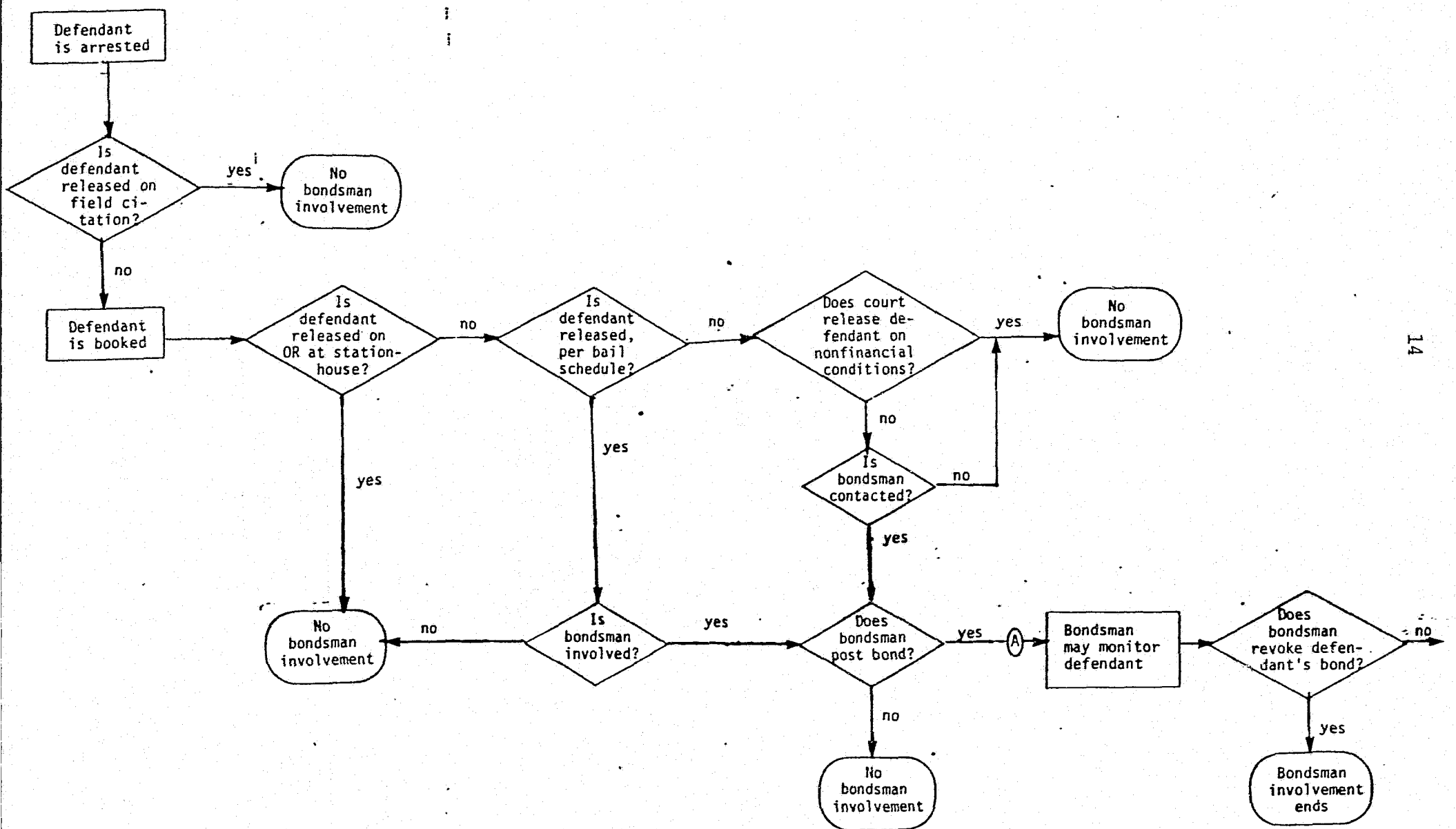
In addition to formal ads, bondsmen rely on informal "word-of-mouth" advertising. Repeat business from former clients, referrals from former clients and referrals from attorneys comprise a larger proportion of many bondsmen's clients than "walk-ins."

C. The Bonding Decision

After a bondsman has been contacted by a defendant (or relative or friend of the defendant), a decision must be made about whether to write the bond. In general, most of the bondsmen interviewed described decision-making on bonds as "an art, not a science," and said they relied heavily on their "gut feelings" or "instincts." Beyond this, bondsmen usually discussed two broad types of considerations that were of primary importance: the financial conditions of the bond and the expected ease or difficulty of locating the defendant later, if a court date were missed. These two considerations were often related, because third parties who participate in a bond (e.g., as cosigners) will have a vested interest in helping locate a missing defendant.

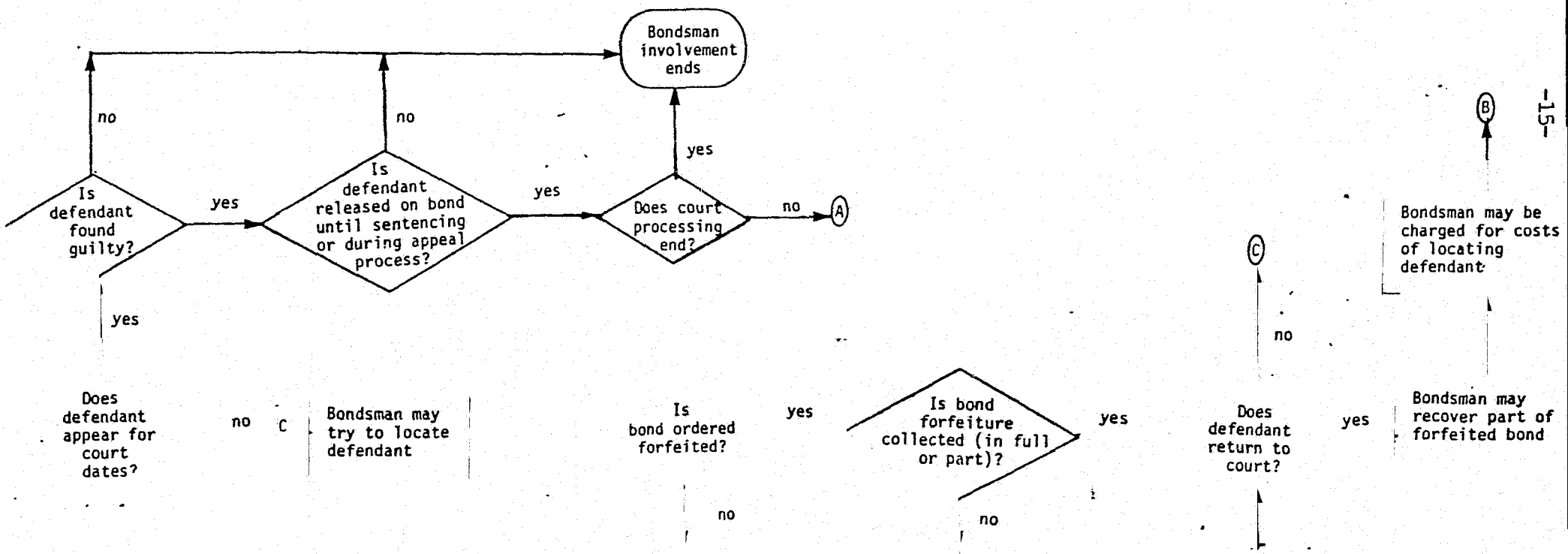
Financial considerations when making a bonding decision encompass more than simply whether the defendant has sufficient funds to pay the premium. If the defendant is deemed a "good risk," the bondsman may extend credit for the premium and require little or no collateral. On the other hand, for a "poor risk," the bondsman is likely to want immediate payment of the premium, full collateral and several cosigners.

FIGURE 1, BONDSMEN'S INVOLVEMENT IN THE PRETRIAL PROCESS



CONTINUED

FIGURE 1. BONDSMEN'S INVOLVEMENT IN THE PRETRIAL PROCESS (CONTINUED)



Whenever possible, bondsmen like to have the participation of responsible individuals as cosigners in the bonds they write. Ideally, such individuals are employed and own property, besides knowing the defendant well. Several bondsmen commented that they assessed third parties involved in bonds, rather than the defendants, when making bonding decisions. The bondsmen claimed always to assume that defendants were unreliable and likely to leave town. Consequently, they wanted to protect their investments by having reliable cosigners backing up the bonds.

Bondsmen recognize that many persons -- including many persons who are good bond risks -- do not have any "hard" collateral, nor do their close relatives and friends.[17] Indeed, many bondsmen discussed the value of collateral in terms of its psychological effect on the defendant, rather than its financial value to the bondsman: if the defendants know that their parents have pledged their homes (or furnishings or wedding rings) as collateral, they are less likely to consider leaving town to avoid their court dates. According to bondsmen, it is because of the psychological value that they accept as collateral many items that would have little financial value, if the bondsman were to take possession of them.

Many of the interviewed bondsmen stated that property is the only "good" collateral for a bond, if financial considerations alone are evaluated. Even with property, however, the bondsman does not avoid all risk on a fully collateralized bond. To take possession of the property requires a legal proceeding at an unknown future date. Moreover, once the bondsman has taken possession, the property must be sold before the funds can be realized. This, too, can take a considerable length of time, particularly if the local housing market is depressed.

Thus, a bondsman who pays a bond forfeiture and tries to recover the funds by taking possession of a house used as collateral may have a lengthy wait before breaking even on the bond. This is one reason why most bondsmen expressed great reluctance to take possession of collateral. In most cases, they said, they would much prefer to work out a payment schedule or similar arrangement with the owner of the collateral. Most bondsmen noted, however, that they would take possession of property, "if they had to," in part to avoid the reputation that they never did so.

Most of the bondsmen surveyed did not rate the amount of bond as very important when making a bonding decision, although very large or very small bonds may receive special attention. A large bond may, for example, require the insurance company's approval. Also, a bondsman may want to reduce the potential loss on a large bond through bond-splitting, i.e., having another bondsman participate in the bond.[18]

Several of the bondsmen interviewed discussed their reluctance to write small bonds. Only a small profit can be made from such bonds, and they are thought to have greater than average risk. As one bondsman observed, "[w]hy else would the court set a low bond, instead of just releasing the guy or O.R.?"

Another consideration that affects bond-writing decisions for many bondsmen is the identity of the defendant's attorney. According to the bondsmen interviewed, some attorneys do a good job of explaining court procedures to their clients and making sure they know when to appear for court. Such followup by attorneys reduces the need for it by bondsmen. On the other hand, bondsmen also asserted that some attorneys will try to frighten defendants who have not paid their legal fees. If sufficiently scared and unable to raise the money to pay the attorney, the defendant may simple leave town. Thus, an attorney can make the bondsman's job either harder or easier.

As part of the initial bond-writing process, bondsmen typically record information about the defendant on a bond application form, which is usually signed by the defendant and any third party indemnitors for the bond. Bondsmen may also take a photograph of the defendant, particularly for an especially large bond or if the bondsman has some reason to question whether the defendant will appear for court.

Bondsmen may give the defendant and cosigners materials about the criminal justice process. For example, one interviewed bondsman gives defendants a fact sheet on penalties for bail jumping and provides cosigners with similar information about harboring a fugitive.

Regardless of whether bondsmen give written information to defendants about their expected conduct while on bond, most bondsmen indicated that they orally stress to defendants the importance of appearing for court and the penalties for failing to do so. Additionally, bondsmen may explain criminal justice procedures to defendants who are unfamiliar with them.

D. Followup After Bonding

Usually, a bondsman's liability on a bond continues until the case ends, either at the time of sentencing for a guilty defendant or at the point when a defendant is found not guilty.[19] A bondsman may stay in touch with a bonded defendant throughout the pretrial period or may have no further involvement with the accused, once released, unless failure-to-appear occurs. Bondsmen expressed mixed views about the value of routine followup with defendants, and followup practices varied accordingly.

Bondsmen who consider routine followup essential to avoid failures-to-appear may mail out notices of coming court dates, call the defendant the day before the court date and/or require the defendant to call in periodically. Several of the bondsmen interviewed not only notify defendants of coming court dates but also advise the cosigners of them. On the other hand, the bondsmen who view routine followup as unnecessary note that most defendants will appear for court without it. Such bondsmen concentrate their post-bond followup activities on locating defendants who have missed court dates.

According to the bondsmen interviewed, trying to locate defendants who did not appear for court is a major part of their work. Although bondsmen often face the possibility of substantial financial losses if they do not locate missing defendants, many bondsmen stated that they try to find fugitives even when their bonds are fully collateralized and financial loss could presumably be avoided without looking for the defendant. Bondsmen gave several reasons for engaging in the search anyway. First, as discussed earlier, full collateral does not necessarily mean that a bondsman will recover forfeited funds easily and quickly. This by itself provides an incentive for avoiding payment of the forfeiture, if possible. (However, several interviewed bondsmen cited instances where a defendant had offered to pay them the full amount of the bond, in return for a promise not to look for the person after failure-to-appear.)

A second reason given for trying to locate all fugitives is that bondsmen do not want to acquire the reputation among defendants that there will be no followup if a court appearance is missed. Finally, many bondsmen commented on their concern about maintaining credibility with the court by assuring the return of as many fugitives as possible.

There is a popular image of fugitive retrieval that includes bondsmen's breaking into homes at down, waving guns at sleepy defendants, handcuffing them, forcing them into cars (or trunks of cars) and driving them across country to return them to court.[20] Although such instances have been documented, they appear to be few in comparison to the total number of retrievals that occur. Bondsmen describe a far more mundane process of returning defendants to court.

Many defendants are easily located and return to court of their own volition. These are defendants who forgot their court dates, were told by their attorneys that they did not have to appear that day, could not get to court (because of illness, transportation problems, etc.), or who consciously failed to appear but are readily persuaded to return to court. Such defendants, who probably constitute the majority of the failure-to-appear cases for most bondsmen, often require only a telephone call to obtain a return to court.

If the defendant cannot be located immediately, the bondsman will usually contact the individuals who cosigned the bond and/or posted collateral as well as the defendant's attorney and anyone else listed on the bond application who might know the defendant's whereabouts. Often one or more of these persons is in contact with the defendant or can find the defendant with little difficulty and effect a reasonbly prompt return to court. Additionally, some defendants are rearrested on new charges and, as a result, are returned to court -- with no action required on the bondsman's part.

Other defendants are more difficult to locate and may require an extensive search. Several of the interviewed bondsmen commented that "skip-tracing" had become more difficult in recent years. This was attributed to greater sophistication on the part of fugitives, as shown, for example, by an increased use of aliases and multiple aliases.

Bondsmen who do not track their own "skips" (or who do not work at a bonding agency with skip-tracers on its payroll) frequently hire persons who specialize in the apprehension of defendants who have failed to appear for court. Often called "bounty hunters," these individuals typically retrieve defendants who have absconded in return for a percentage of the bond (plus expenses, in many cases).

A variety of techniques may be used to try to locate defendants. For example, bondsmen may offer rewards and pay informants for location tips.[21]

Much of the "sleuthing" involved in fugitive retrieval is done by telephone. According to bounty hunter "Papa" Ralph Thorson (portrayed by Steve McQueen in the movie The Hunter), "[p]eople will tell secrets to a blind voice on the phone that they wouldn't tell their best friend. If it weren't for the telephone, we wouldn't find half our people, and it it weren't for snitches, we wouldn't find the other half."[22]

Most bondsmen who were asked about skip-tracing said that fugitives, when caught, usually act as if they expected to be apprehended. They "go along quietly" and do not resist efforts to return them to custody. Some bondsmen noted that skips may be nervous and concerned about what the court will do to them (indeed, they may have failed to appear for that very reason). Bondsmen try to calm these defendants and, if appropriate, may offer to reinstate their bonds, if the court authorizes their continued release.

Rather than apprehend the fugitive personally, the bondsman may only locate the defendant and ask the police to make the actual arrest. Some bondsmen indicated that they did this for

their own convenience, while other bondsmen considered such an action a "favor" to the police department, which could show a "cleared" warrant for a small expenditure of time. As bounty hunter Thorson commented about this practice, "[t]hey can have the credit -- I just want the cash."[23]

The bondsmen's power to arrest fugitives have been a source of controversy in certain jurisdictions. Thorson described this power as "identical to kidnapping, except you do it legally."[24]

The nature and edxtent of the bondsman's arrest power was addressed by the U.S. Supreme Court in Taylor v. Taintor. Though decided more than a century ago (in 1873), this case still generally governs on the subject. The Court said:

> When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge, and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another state; may arrest him on the Sabbath; and if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the rearrest, by the sheriff, of an escaping prisoner.[25]

Thus, the bondsman's power to arrest a defendant arises from the relationship between the bondsman and the defendant. It is, in Donelan's words, "a private right and not a matter of criminal procedure."[26] Because of this, a bondsman can usually[27] retrieve a fugitive who has crossed state lines more easily than can the state itself, which must follow formal extradition procedures. This was explicitly state in Fitzpatrick v. Williams:

> The right of the surety to recapture his principal is not a matter of criminal procedure, but arises from the private undertaking implied in the furnishing of the bond....It is not a right of the state but of the surety. If the state desires to reclaim a fugitive from its justice, in another jurisdiction, it must proceed by way of extradition in default of a voluntary return.[28]

This difference in authorized retrieval procedures for bondsmen and public officials, combined with the typically scarce police resources available for serving warrants, may encourage law enforcement officers to rely to some extent on bondsmen for fugitive retrieval, particularly if there is a reason to think the defendant may have left the jurisdiction. Reliance on bondsmen for fugitive retrieval effectively transfers part (in some cases, a large part) of the costs of this function

from the publicly funded criminal justice system to the privately funded bond system.

Although fugitive retrieval by bondsmen may save the jurisdiction money, the potential for bondsmen's abuse of their arrest powers has caused concern in certain states. Oregon, for example, has passed legislation limiting the fugitive retrieval authority of bondsmen. Courts in certain states have also expressed disapproval of the present system. For example, an Alabama court decried "this 'pay or get shot' attitude...[of] bonding companies."[29] It continued:

> The Code cannot and must not be construed to license company officials to run around the countryside armed with...shotguns and pistols, in an effort to collect their personal debts....The proper procedure for enforcing collection of a debt is not by means of an armed posse descending upon the debtor at 5:00 a.m. in his own domicile.[30]

E. Forfeitures

If a fugitive is not returned to court within a certain time period, the bondsman may be ordered to forfeit all or part of the bond. Little information is available about the amount of forfeitures paid to the court, although an estimate of one-to-two percent of the face value of all bonds written was commonly cited by bondsmen interviewed.[31]

There are many reasons why a bondsman might not pay the full amount of the forfeitures ordered. For example, as discussed in Chapter II, jurisdictions may provide a "grace period" (often several months) before forfeitures that have been ordered must be paid. If a defendant is returned to court within this time, no forfeiture payment will be required.

Bonds may be exonerated for other reasons as well. For example, if a defendant is incarcerated in another jurisdiction, the bondsman is usually not ordered to forfeit the bond. However, the bondsman may be charged a "bring-back" fee by the jurisdiction, if it incurs costs in returning the defendant to its custody (e.g., if law enforcement officers are sent to pick up the defendant).

The court may also require only partial payment of a forfeiture order. This is particularly likely to occur if the bondsman demonstrates that considerable effort was expended looking, though unsuccessfully, for the defendant.

Aside from forfeiture reductions or remissions by the court, bondsmen may also, of course, recover some of their losses from cosigners or by taking possession of any collateral that backed the bond. However, as discussed earlier, all forfeitures cannot

the bond. However, as discussed earlier, all forfeitures cannot be recovered in this way, and even those that are may involve delays of many months.

Many bondsmen commented the court should be tougher on "willful" failures-to-appear. This would require prosecution for failure-to-appear, instead of the more common practice of dropping this charge (if it is even brought). Tougher court responses to failures-to-appear are clearly in the bondsmen's interest, if such actions would indeed deter defendants from missing their court dates.[32]

F. Other Activities of Bondsmen

Aside from their activities directly related to defendant processing, bondsmen also engage in a variety of administrative and public relations tasks. As discussed in Chapter II, state laws often require bondsmen to submit periodic reports on their bond-writing activities or at least to maintain certain records concerning them. Other administrative tasks include those inherent in any business enterprise (e.g., paying bills, answering questions, etc.). Also, good public relations are important to bondsmen, who may expend considerable effort in developing and maintaining working relationships with criminal justice personnel.

Additionally, bondsmen are becoming more and more active in state or national bondsmen's associations and/or in efforts to influence legislation affecting bondsmen. The bondsmen's associations in California, Florida, and Texas are particularly active ones. In these states, the bondsmen's associations have, for example, led successful campaigns against legislation to authorize such release alternatives as 10 percent deposit bond for all defendants. Bondsmen's associations in other states have also opposed similar legislative proposals.

Although bondsmen's associations are probably most visible when they are lobbying on behalf of specific legislation, they may serve other functions as well. For example, the Florida bondsmen's association has helped develop and run training courses for prospective bondsmen. Additionally, the Professional Bondsmen of the United States (PBUS), the national organization of bondsmen, has included a bondsman's "code of ethics" in its by-laws and promulgates these standards of conduct for its members.

G. Profitability of Bail Bonding

The profitability of bail bonding is difficult to determine, and most of the bondsmen interviewed seemed reluctant to discuss their incomes. De Rhoda[33] reports estimates, made by a representative of the bonding industry in 1979, that the typical

bail bondsman makes about $25,000 a year and that bondsmen who write a large number of bonds make perhaps $50,000 to $75,000 annually. These estimates are consistent with comments made by bondsmen interviewed during this study, although no reliable data are available about bondsmen's earnings.

Wice commented that bondsmen "are usually operating on shaky financial foundations and must exercise caution in order to avoid complete economic collapse."[34] Similarly, Hinden's analysis of bail bonding in Connecticut in 1971 concludes: "These figures really belie the widely held vision of bondsmen as wealthy profiteers reaping vast rewards from the bail system. In fact, the Connecticut bondsmen, for the most part, resemble nothing more than small businessmen, scraping to get by."[35]

Despite these conclusion of various researchers, there is still a widespread perception that bondsmen make enormous sums of money, some of it from questionable sources. Although we found no evidence in the present study that this is the case, our ability to discover such evidence was, of course, quite limited.

The economics of bail bonding are considered in greater detail in the next chapter. Based on analysis of six cities, the chapter analyzes the factors that affect the costs, revenues and potential profits of bail bonding.

CHAPTER IV.

ANALYSIS OF BAIL BONDING IN SPECIFIC SITES

A. Site Selection

This chapter presents the results of detailed data collection and analysis for four sites: Fairfax, Virginia; Indianapolis, Indiana; Memphis, Tennessee; and Orlando, Florida. These jurisdictions were chosen for the following reasons;

- Bond is used extensively in each site.
- Court officials were very cooperative about making their records available and explaining local procedures to the research team.
- The sites represent different regions of the country.
- The sites reflect variation in the market structure of the local bonding industry and in the types of bondsmen (e.g., insurance and property bondsmen) who are licensed.
- The jurisdictions are in states with varied regulatory activities regarding bondsmen.

Data collection in each site was limited to defendants charged with the felony offenses of robbery, burglary, aggravated assault, larceny/theft (including auto theft), fraud or the distribution (not simple possession) of drugs. These charges were chosen because of the expectation that each would be fairly common in the individual sites. Cases were selected from arrests made between July 1, 1979, and December 31, 1979, except in Indianapolis; there, the March 1-August 31, 1979, time period was used, because court procedures had been changed significantly in September 1979. These time periods were picked so that cases would have had sufficient time to reach disposition, and any bond forfeitures ordered would have had sufficient time to be paid or exonerated, before data collection began in June 1981.

Within these charge and time period limitations, two samples were selected: the first (or "general") sample was a random sample of all arrests, while the second (or "bondsmen") sample was a random sample of the remaining cases in which a bondsman had been used.[36] Thus, the general sample provides overall information about the jurisdiction (e.g., release rates, use of bondsmen, charge mix), while the bondsmen sample focuses only on cases involving bondsmen. Because of the study's primary interest in bondsmen, the bondsmen sample was the larger one,

as shown in Table 1. Altogether, data were collected on 1,227 cases in the four sites.

TABLE 1. SAMPLE SIZES BY SITE

Site	General Sample	Bondsmen Sample	TOTAL
Fairfax, VA	88	165	253
Indianapolis, IN	77	214	291
Memphis, TN	101	282	383
Orlando, FL	85	215	300
TOTAL	351	876	1,227

B. Data Collection

Data collection for the study sample occurred in two phases. First, court records were reviewed to obtain information on the defendant's background (e.g., age, ethnicity, gender, prior record, residence); the case (e.g., charge, release conditions, disposition); and, if applicable, court responses to failure to appear (e.g., bond forfeiture orders and collections, release conditions after defendant's return). Court records were also used, where applicable, to identify the specific bondsman involved in the case.

The second phase of data collection entailed contacting individual bondsmen and asking for access to their records for these cases, so that data could be obtained on the terms of the bonds (e.g., premiums, credit, collateral, cosigners) and, if applicable, the bondsman's response to a defendant's failure to appear (e.g., paid the forfeiture, located the defendant, reinstated the bond).[37] Approximately one-third of the bondsmen, accounting for 45 percent of all bonded cases in the study sample, provided data from their files.[38]

Bondsmen and selected criminal justice officials were interviewed in each site. Interviews with bondsmen were often extensive, sometimes lasting several hours over a period of several days.

C. Characteristics of the Sample

Table 2 presents information on defendant characteristics by site. As indicated:

- Most of the defendants in each site were under 26 years of age, with somewhat older defendants in Orlando and somewhat younger defendants in Indianapolis.
- Defendants were predominantly black in Memphis and white in other sites.
- Most defendants were males in all sites.
- Virtually all defendants (98 percent) in Indianapolis and Memphis were local (county) residents, as compared with 86 percent in Orlando and 63 percent in Fairfax. The low percentage in Fairfax reflects its location as a suburb of Washington, DC; the other sites are centers of their metropolitan areas.
- Of the three sites where prior criminal record data were available, Memphis had the defendant population least involved in prior criminality: 43 percent of Memphis' defendants had no prior adult arrests, as compared with about 30 percent in Fairfax and Indianapolis. Moreover, only 10 percent of Memphis' defendants were on probation, parole or pretrial release for another charge when arrested, as compared with more than 20 percent in the other two sites.

D. Release Outcomes

Most defendants were released before trial. The release rate for the general sample was 56 percent in Orlando, 58 percent in Indianapolis, 77 percent in Memphis, and 81 percent in Fairfax. The low release rate in Orlando is partly due to the relatively long time (21 days) permitted for prosecutorial screening of arrest charges. Many cases were dropped after 21 days, because the prosecutor decided not to go forward with them; some of the defendants in those cases had been detained the full 21 days.

The most common way that defendants obtained release in these four sites was by posting bond. Seventy-one percent (172 out of 242) of all released defendants in the general sample were released on bond. Only Fairfax and Memphis used release alternatives other than secured bond to any major extent. In Fairfax, more than one-third of the released defendants were

TABLE 2. DEFENDANT CHARACTERISTICS BY SITE*

Characteristic	Fairfax, Virginia	Indianapolis, Indiana	Memphis, Tennessee	Orlando, Florida
Age				
21 or under	36%	46%	35%	33%
22-25	25	22	26	19
26-30	15	20	19	19
31-40	16	8	14	18
41 or over	7	4	6	10
TOTAL	100%	100%	100%	100%
No. of cases	251	277	383	300
Ethnicity				
Black	39%	31%	76%	33%
White	59	68	23	67
Other (including Hispanic surname)	2	1	1	0
TOTAL	100%	100%	100%	100%
No. of cases	253	279	382	296
Gender				
Male	82%	89%	83%	90%
Female	18	11	17	10
TOTAL	100%	100%	100%	100%
No. of cases	253	290	381	300
Residence				
Local (county)	63%	98%	98%	86%
Not local	37	2	2	14
TOTAL	100%	100%	100%	100%
No. of cases	248	237	362	295
Prior Adult Arrests				
None	31%	30%	43%	**
1-2	34	29	25	**
3-4	17	16	15	**
5 or more	18	26	17	**
TOTAL	100%	100%	100%	**
No. of cases	146	206	355	**
Prior Adult Arrests for Felony Charges				
None	59%	63%	59%	**
1-2	31	22	26	**
3-4	6	9	11	**
5 or more	5	7	4	**
TOTAL	100%	100%	100%	**
No. of cases	145	163	352	**
On Probation, Parole or Pretrial Release When Arrested				
Yes	22%	23%	10%	**
No	78	77	90	**
TOTAL	100%	100%	100%	**
No. of cases	136	235	358	**

*For combined general and bondsmen samples.

**This information was not available for Orlando.

Note: Percentages may not add to 100 percent because of roundi...

released on unsecured bond, and in Memphis about 40 percent of the released defendants were released on their own recognizance.

E. Analytic Approach

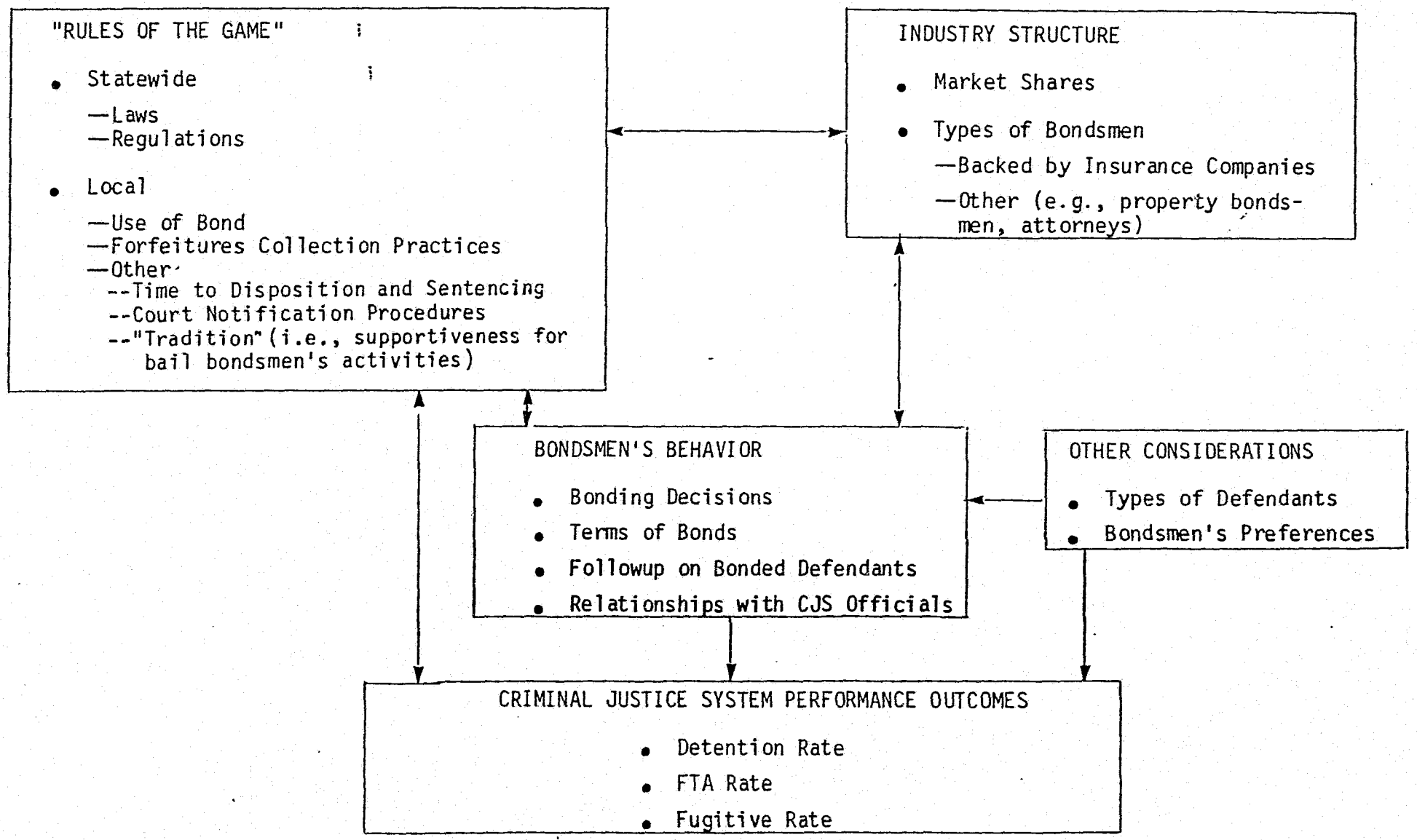
Figure 2 illustrates the conceptual framework for analysis: it shows major factors that affect bondsmen's behavior, which in turn affects criminal justice system performance outcomes.[39] As indicated, both the "rules of the game" and industry structure influence the actions of bondsmen in a particular locality. The rules of the game reflect the external environment that bondsmen face and include statewide laws and administrative regulations as well as local practices, such as the overall use of bond (which determines the size of the market for bondsmen's services), forfeitures collection practices (which affect bondsmen's profit margins), time required for cases to reach disposition (which is also the time that bondsmen's funds are at risk), court notification procedures (which may affect defendants' appearance rates) and "tradition" in the jurisdiction regarding use of bondsmen (i.e., some communities view bondsmen as vital components of the criminal justice system, while others see them as relatively minor actors or as undesirable elements in the criminal justice process).

In general, in jurisdictions having rules of the game that are more favorable to bondsmen (e.g., rules and regulations that are not unduly restrictive, extensive use of bond, lenient forfeitures collection practices, short case processing times, good court notification procedures and local traditions supportive of bondsmen's operations), one expects to find that bondsmen will be able to operate their businesses more profitably. Consequently, they will be able to incur a higher level of risk in their bail bonding decisions. This should result in their writing bonds for defendants who pose higher release risks and extending bond terms (e.g., collateral and cosigner requirements, credit availability) that are more favorable to defendants.

The expected outcomes for the criminal justice system are reduced detention for defendants who have money bonds set (because bondsmen will be able to write bonds for higher risk defendants, who might otherwise be detained), increased failure-to-appear rates (because of the release of higher risk defendants) and increased fugitive rates (because of the combined effect of higher failure-to-appear rates and reduced incentives for bondsmen to track skips, due to lenient forfeiture collection practices).

Conversely, in jurisdictions with less favorable rules of the game, one expects to find that bondsmen have a more difficult time making a profit and, consequently, take fewer risks. Thus, bond decisions will be more conservative (i.e., risky defendants will not make bond), as will bond terms (i.e., collateral and cosigner requirements will be more stringent, and credit will

FIGURE 2. CONCEPTUAL FRAMEWORK FOR ANALYSIS



be more difficult to obtain). As a result, there will be more detention but lower failure-to-appear and fugitive rates.

The effect of forfeitures collection practices deserves special stress, because of the common assumption that "tough" forfeitures collection practices are desirable and "lenient" procedures are not.[40] While tough policies regarding forfeitures will increase a bondsmen's incentive to locate a defendant who has failed to appear, such policies will also reduce the incentive to write bond for a risky defendant. Thus, increased detention may be an unanticipated consequence of tougher forfeitures collection policies -- unless other changes, such as expanded use of nonfinancial release, offset these effects.

A second major factor affecting bondsmen's behavior, as shown in Figure 2, is industry structure, including market shares (which reflect the extent of competition among local bondsmen) and the types of bondsmen (e.g., "insurance," property or other bondsmen). In general, a more competitive situation among bondsmen should result in more bonds written and more favorable bond terms offered to defendants. Consequently, there should be less detention (as bondsmen rush to write bonds before their competitors do) but higher failure-to-appear rates (because riskier defendants will make bond).

The nature of the market may mitigate the influence that the rules of the game alone would have on bondsmen's behavior. For example, although "tough" forfeitures collection policies might discourage bonding of higher risk defendants, this tendency could be offset by the pressures in a very competitive market to write as many bonds as possible.

In addition to mitigating the effects of the rules of the game, industry structure may itself be affected by the rules of the game. For example, state laws and administrative regulations may restrict competition by making it difficult for new bondsmen to enter local markets, or regulations (such as financial requirements) may effectively limit bondsmen to those backed by insurance companies. Similarly, industry structure may affect the rules of the game. If markets are becoming too concentrated and regulatory agencies are dissatisfied with the resulting bonding behavior, regulatory policies may be changed so as to foster increased competition among bondsmen.

Other considerations besides industry structure and the rules of the game affect bondsmen's behavior. These include the characteristics of defendants and bondsmen's preferences. For defendants who pose higher risks, one expects fewer bonds to be written and bond terms to be more stringent (unless forfeitures collection practices are so lax that the increased risk posed by the defendants does not reflect any increased risk of financial loss for the bondsmen). Bondsmen's individual preference vary

considerably (e.g., some interviewed bondsmen were reluctant to bond prostitutes; others, shoplifters; and still others, child molesters). The effect of these individual preferences on overall bonding practices in a jurisdiction should be comparatively less in more competitive markets.

There are, of course, many interrelationships among the items shown in Figure 2. For example, a jurisdiction's use of bond -- a component of the rules of the game that affect bondsmen's behavior -- will depend in part on the extent of jail crowding (with crowded jails likely to result in lower bonds and more lenient release practices). However, jail crowding can reflect in part bondsmen's decisions regarding good bond risks, and those decisions are in turn affected by the rules of the game.

Interrelationships among the various factors that affect bondsmen's behavior can perhaps best be understood by considering bail bonding in specific jurisdictions. Thus, an application of the analytic framework to the four sites follows.

F. Findings from the Four Sites

The statewide regulatory environment was the most favorable for bondsmen in Virginia, where regulations were not very detailed. In addition, both insurance and property bondsmen were encouraged to operate, and credit was permitted. The second most favorable regulatory environment was found in Tennessee. There, too, both insurance and property bondsmen were encouraged, and credit was allowed. The regulations governing bondsmen were more detailed than in Virginia, however, and imposed more limitations on bondsmen's activities. Less favorable regulatory environments existed in Florida and Indiana. Both states had detailed regulations, which were apparently enforced more actively than in Virginia or Tennessee. Additionally, property bondsmen were rare in Florida and not permitted in Indiana, which also prohibited credit bonding.

Local "rules of the game" also varied across sites. When the overall use of bail was considered, Indianapolis and Orlando had practices most favorable to bondsmen, as shown by the setting of surety bond for about 95 percent of the cases studied. In Farifax and Memphis surety bond was set for 67 percent of the defendants studied. Bond amounts were considerably higher in Indianapolis and somewhat lower in Orlando than in the other sites, as shown in Table 3. In Indianapolis 14 percent of the bonds were below $2,500, as compared with 53 percent in Fairfax, 70 percent in Memphis and 77 percent in Orlando. Additionally, 35 percent of the Indianapolis bonds were at least $10,000, as compared with about 5 percent of the bonds elesewhere. Thus, Indianapolis had both high use of bond and high bond amounts, while Memphis had low use of bond and relatively low bond amounts. Orlando and Fairfax showed mixed patterns of use. Orlando had extensive setting of bond and low amounts, while Fairfax had low use and moderate amounts.

TABLE 3.

COMPARISON OF BOND AMOUNTS IN FOUR SITES
(Percentages Are Cumulative)

Bond Amount	Fairfax, Virginia	Indianapolis, Indiana	Memphis, Tenessee	Orlando, Florida
$ 0 - $ 999	5%	1%	13%	3%
$1,000 - $1,499	44	7	55	77
$1,500 - $2,499	53	14	70	77
$2,500 - $3,499	80	35	85	91
$3,500 - $5,499	90	58	95	97
$5,500 - $9,999	93	65	95	99
$10,000 - $14,999	100	72	100	99
$15,000 or more	100	100	100	100
Number of cases*	59	71	60	77

*These are cases for which bond was set in the general sample only.

No reliable data were available on differences in forfeiture collection practices across sites. There were very few cases in the defendant sample for which bond forfeiture collection was a possibility. This was because only 12 percent of the released defendants failed to appear, and the vast majority of those defendants subsequently returned to court. Indeed, only about one percent of the released defendants were successful fugitives, never coming back to court.

The sites reflect varied statutory and administrative provisions regarding the collection of forfeitures. Fairfax and Orlando required payment most quickly (one month) but allowed the longest time period (12 months) for returning the defendant to court. In Indianapolis and Memphis, payment was due after approximately six months, which was also the time allowed for fugitive retrieval.

The median time for a studied case to reach disposition was shortest in Fairfax (three months) and longest in Indianapolis (six months), with Memphis' and Orlando's elapsed times falling between these extremes. There was little difference in court notification procedures for the four sites, although bondsmen in Memphis reported some problems caused by the fact that they were not routinely notified of defendants' scheduled court dates.

Concerning industry structure,[41] Fairfax had a much higher degree of market concentration than the other sites. In Fairfax, the three largest bondsmen wrote 85 percent of the bonds; comparable percentages elsewhere were 57 percent for Indianapolis, 50 percent for Memphis, and 56 percent for Orlando. In terms of types of bondsmen, Indianapolis and Orlando were both exclusively "insurance bondsmen" sites, while Fairfax and Memphis had substantial participation from property or "professional" bondsmen.

The varied rules of the game and industry structure across the four sites were, as expected, associated with variation in the bond terms offered defendants as well. Overall, approximately 40 percent of the bonds (for which data were available) were written with no cosigners, and an additional 40 percent had only one cosigner. Bondsmen in both Memphis and Orlando made greater use of multiple cosigners that Fairfax bondsmen: 29 percent of the bonds in Memphis and 22 percent of those in Orlando had two or more cosigners, as compared with 13 percent of the bonds in Fairfax.

Collateral was most common in Orlando, where it was obtained for 55 percent of the bonds and least common in Fairfax. There was some use of credit in all sites except Indianapolis, where credit bonding was illegal. Credit was extended more frequently in Memphis than in Fairfax or Orlando and averaged about 10 percent for the three sites.

Thus, in terms of bond conditions for the three sites where a reasonable amount of information was available, Fairfax was the site most favorable to defendants, with bondsmen there requiring fewer cosigners and less collateral than elsewhere. Orlando had the most stringent conditions, with more requirements for multiple cosigners and for collateral. Memphis fell between these extremes, and insufficient data were available to rate Indianapolis.

The criminal justice system outcomes (e.g., detention and failure-to-appear) also varied among the four sites. Detention rates for defendants with bonds set were highest in Indianapolis and Orlando (44 percent and 46 percent, respectively) and lowest in Fairfax (29 percent) and Memphis (33 percent). The length of detention was higher in Indianapolis than in the other sites. The failure-to-appear rates were highest in Indianapolis at

18 percent and ranged from 9 percent to 12 percent in the other sites.

These findings, summarized in Table 4, can be compared with the predicted relationships among rules of the game, industry structure, bondsmen's behavior and criminal justice system outcomes. First, given favorable regulations, the conceptual framework predicts that there will be better bond terms for defendants, less detention of defendants who have bonds set as their release conditions, and higher failure-to-appear rates. The expected relationship of regulations to bond terms and detention was found in all sites. However, the expected result was not achieved for failure-to-appear rates, where the highest rate occurred in the site (indianapolis) with the least favorable regulations.

In sites with greater use of bond, one expects to find better bond terms, less detention of defendants who have bonds set, and higher failure-to-appear rates. No direct correspondence with bond terms or detention was found, although there was some relationship with failure-to-appear.

More favorable forfeitures collection practices should be associated with better bond terms, lower detention of defendants who have bonds set, and higher failure-to-appear rates. The expected relationship for bond terms was found in Fairfax and for detention, in Indianapolis as well. Only Memphis showed the expected result for failure-to-appear.

Faster case processing should be directly related to better bond terms, lower detention for defendants who have bonds set, and higher failure-to-appear rates. The expected relationships with bond terms and detention, although not with failure-to-appear, were found across sites.

Finally, more competitive markets should be associated with more favorable bond terms, less detention for defendants who have bonds set, and higher failure-to-appear rates. The bond terms and detention relationships roughly met expectations in Indianapolis, Memphis and Orlando. Fairfax, however, diverged sharply from the expected relationships. It was the site with the least competition but nevertheless had the best bond terms and least detention for defendants with bonds set.

The absence of the expected relationship between the extent of bond-setting by the courts and the extent to which defendants with bonds set secured release before trial deserves special mention. The expectation had been that greater use of bonds by the courts would, by increasing the bondsmen's total potential market, permit bondsmen to incur greater risks in their release decisions. As a result, the detention rates of defendants for whom bond was set were expected to be relatively low. However, the data showed that the two sites with the greatest use of bond

TABLE 4.

FOUR-CITY COMPARISON OF FACTORS AFFECTING
BAIL BONDING DECISIONS
AS RELATED TO CRIMINAL JUSTICE OUTCOMES

Item	Fairfax, Virginia	Indianapolis, Indiana	Memphis, Tennessee	Orlando, Florida
Statewide regulatory environment	Most favorable	Least favorable	Moderately favorable	Least favorable
Use of bond by judges	Low	High	Low	High
Bond amounts	Moderate	High	Low	Low
Forfeiture collection practices	Most favorable	Least favorable	Least favorable	Most favorable
Time to case disposition	Short	Long	Moderate	Moderate
Extent of competition among bondsmen	Low	Moderate	High	Moderate
Bond terms for defendants	Most favorable	*	Moderately favorable	Least favorable
Detention rates for defendants with bonds set	Low	High	Low	High
Failure-to-appear rates	Low	High	Low	Low

*Not available.

(Indianapolis and Orlando) had the highest detention rates for defendants with bonds set, while the two sites with the least use of bond (Fairfax and Memphis) had the lowest detention rates for those defendants.[42]

When this finding is considered further, it illustrates important interrelationships among key factors affecting bondsmen's behavior. In Fairfax the low use of bond was offset by fast case processing and a favorable regulatory environment, so that relatively little detention of defendants with bonds set resulted. Indeed, fast case processing and favorable regulations in Fairfax also overcame the expected adverse effects of high market concentration in that site.

In Memphis the low use of bond was offset by a reasonably favorable regulatory environment and a highly competitive industrial structure, which again resulted in relatively low detention of defendants with bonds set. On the other hand, high use of bond in Indianapolis was offset by the least favorable regulatory environment and the slowest case processing of the four sites, so that there was considerable detention of defendants for whom bond had been set as a condition of release.

These findings suggest that the nature of the regulatory enviroment and the length of case processing are particularly important factors affecting bondsmen's operations. Indeed, the influence of these factors seems stronger than that of market structure or of the overall use of bond in a jurisdiction, at least for the four cities studied.

The lack of certain relationships commonly thought to exist between failure-to-appear and other variables merits comment. Although high bonds are sometimes thought necessary to assure appearance, the sites with low bonds had lower failure-to-appear rates. Moreover, the city with the highest bonds (Indianapolis) had the highest failure-to-appear rate. Similarly, while low detention rates might be expected to produce high failure-to-appear rates, because of the release of many high-risk defendants, the sites with low detention rates in fact had low failure-to-appear rates. Nor did jurisdictions with favorable regulatory environments or lenient forfeitures collection practices have high failure-to-appear rates.

One expected relationship regarding failure-to-appear was confirmed, however: shorter case processing time was associated with lower rates. Low rates were found in the sites where cases were settled within short or only moderately long time periods, while the highest rate occurred in the jurisdiction with by far the longest time required for case disposition.

In general, the conceptual framework for analysis provided reasonably good explanations for the differences in bondsmen's decisions and the effects of those decisions on detention rates. The conceptual framework was not particularly helpful, however, in explaining differences in failure-to-appear rates. This lack of explanatory power may merely reflect the fact that many defendants who fail to appear are not trying to evade justice but rather have forgotten their court dates, become ill, gone to the wrong place, etc. Such "non-willful" failures to appear may occur at random among defendants and so confound efforts to provide systematic explanations of failure-to-appear rates. A better test of the conceptual framework's usefulness for understanding court appearance outcomes would be based on fugitive rates, rather than failure-to-appear rates. However, as discussed earlier, the defendant sample for the sites studied had too few fugitives to undertake such an analysis.

Another aspect of the economics of bail bonding concerns the writing of high bonds. Bondsmen with relatively larger market shares should be in the best position to underwrite high bonds, because a large volume of business can better support the greater risks of higher bonds. This expectation was generally realized in the four study sites. Collectively, the three largest bondsmen in each site wrote 60 percent of all bonds in the study sample but 76 percent of the bonds of $15,000 or more. Moreover, for the four sites as a whole, the single largest bondsman in each site wrote 29 percent of all bonds but 52 percent of the bonds of $15,000 or more.

G. Analysis of Two Other Sites

In addition to the four sites discussed above, where detailed analyses were conducted, two jurisdictions were selected for more limited analyses. Although resource constraints did not permit the data collection scope of the first four sites, inclusion of these two additional sites provided insight about bonding operations under more varied circumstances than in the four sites alone. San Jose, CA, was selected as a West Coast jurisdiction with an active pretrial release program. (Indeed, 34 percent of the defendants arrested in San Jose on the felony charges selected for study were released on their own recognizance, as compared with 10 percent in the first four sites studied.) In San Jose 85 cases were randomly chosen as a "general" sample. Because so few (30) of these cases involved bondsmen, an additional 16 cases with bondsmen were also selected for study.

The second "brief analysis" site was Oklahoma City, Oklahoma. This jurisdiction provided geographic representation for the southwestern part of the country, where bondsmen are very active. In Oklahoma City 16 bonding agencies write bonds. In contrast with San Jose, a high percentage (61 percent) of the Oklahoma City defendants who were arrested on the felony charges studied

were released through a bondsman. An additional 27 percent of those defendants were detained until trial, and the rest (12 percent) were released by posting unsecured bond (9 percent) or their own cash or property (3 percent). The data collection in Oklahoma City was limited to cases where bondsmen were involved; a sample of 202 such cases was selected for study.[43]

Besides the smaller sample sizes in San Jose and Oklahoma City, analysis of these sites was constrained in two other ways. First, data were collected only from court records; no efforts were made to acquire information from bondsmen's files as well. Second, interviewing was much more limited, involving only a few bondsmen and a few court officials. Despite the limitations of the analysis, these sites provided useful information about bailbonding under diverse circumstances.

Oklahoma is a state with a moderately active regulatory agency that administers laws based on the model bonding statute recommended by the National Association of Insurance Commissioners. Oklahoma City had a high use of money bond, which was set for 89 percent of the defendants charged with the felonies selected for study. Although bonds were commonly set, their amounts were low to moderate: 72 percent of the bonds were below $2,500, with a median bond amount of $2,000. Oklahoma City had by far the fastest case processing of any site studied; the median time until sentencing was 61 days. It also had the least market concentration of any site examined, with 38 percent of the bonds written by the three largest bondsmen.

As expected from the fast processing time, strong competition and other factors, detention was low to moderate; 27 percent of defendants were detained until trial, but the average length of detention for all defendants was quite short: the median time detained was less than one day and the mean, 1.3 days. Oklahoma City had a low failure-to-appear rate (five percent for bonded defendants), which may reflect the short case processing time, limiting the period available for failure-to-appear to a brief one.

Like Oklahoma City, San Jose is in a state with a moderately active state regulatory agency, enforcing a detailed statute. In contrast to Oklahoma City, however, San Jose had fewer bonds set (62 percent) but higher bond amounts (only 23 percent of bonds were less than $2,500; 13 percent were $ 10,000 or more; and the median bond amount was $3,000). Additionally, time-to-sentencing (142 days) was considerably longer than in Oklahoma City, though still relatively short in comparison to other sites studied. The market structure was fairly competitive, though somewhat more concentrated than in Oklahoma City.

The overall detention-until-trial rate (27 percent) was the same as in Oklahoma City. However, the <u>length</u> of detention

was much greater: the median number of days detained was six, and the mean was 34. Moreover, nine percent of the defendants were detained more than 90 days (as compared with none detained that long in Oklahoma City). The failure-to-appear rate of 11 percent was about average for all sites studied.

The findings regarding bond-setting and detention in San Jose are somewhat surprising, because the site has a very active, highly regarded pretrial release program. Nevertheless, for the felony charges studied, bond was set almost as often as in Fairfax, where the pretrial release program is much smaller. Moreover, bond amounts were the highest of any jurisdiction studied, except Indianapolis. The length of time detained also rivaled that of Indianapolis, although the overall detention rate was considerably lower (but not as low as in Fairfax or Memphis).

Although we cannot reach definitive conclusions from analysis of San Jose alone, the findings show that in one jurisdiction that has implemented a variety of bail reforms and reduced its reliance on money bond, the defendants for whom money bond was set were treated more harshly than in most of the "non-reform" sites studied. In San Jose defendants who had money bonds set as their release conditions -- though a smaller percentage of all defendants than in most other sites -- faced higher bonds and longer detention than in any other jurisdiction studied except Indianapolis. Thus, while bail reform undoubtedly helped many defendants in San Jose (i.e., those released on their own recognizance), it may have had adverse effects on the defendants who cotinued to have money bond set. Indeed, an economic analysis of bail bonding suggests such an outcome: as bondsmen face tougher market conditions, caused in part by bail reform measures that release good risks without bond, they can be expected to make more conservative bonding decisions, resulting in greater detention for the remaining defendants. In San Jose there were no offsetting factors to mitigate this tendency and thus avoid relatively lengthy detention for defendants who had to post bond to secure release.

Consideration of the economics of bail bonding also provides insight about "gravy" bonds. Although bondsmen's responses about whether higher or lower bonds are more profitable appear contradictory (i.e., some bondsmen say higher bonds and others, lower ones), these opinions can be reconciled within the context of varied local bond markets. For example, in San Jose, bondsmen viewed high bonds as "gravy" bonds and expressed reluctance to write low bonds because of their low profit margins. These opinions prevailed in San Jose because it is a jurisdiction where local judges do not routinely set bond for most defendants; instead, many defendants are released in ways that do not involve posting money bond. Consequently, defendants with lower bonds comprise a special group of persons for whom the court has doubts about their reliability as release risks (although such doubts are not sufficient to warrant high bonds). As a result, bondsmen

would incur higher-than-average risks with such defendants but would receive only small fees in return. Thus, such bond-writing is considered unprofitable and is not widely done.

This situation can be contrasted to that in a jurisdiction where bond is commonly set for most defendants. Under such circumstances, where bonds are set for good risks as well as poor ones, low bonds may be the "gravy" bonds. This is because most of the defendants with low bonds will appear for court, and the loss associated with those who do not is small. Stated differently, the high premium base provided by the many low-risk, low-amount bonds will more than offset the losses for the few defendants who fail to appear. This contrasts sharply with jurisdictions where the only bonds set are for higher risk defendants, because the lower risk defendants are released without bond.

H. Concluding Remarks

The analyses presented in this chapter suggest that the actions of bail bondsmen can be understood, to a large extent, within the context of the incentives given them and the constraints placed upon them. As those incentives and constraints change, bondsmen's overall business activities and bonding patterns will change as well. Thus, if a community wishes to have a bail bond market operate in a certain way, it may be able to achieve that goal by varying the "rules of the game" faced by commercial bondsmen. Conversely, changing those rules without considering the likely effects on bondsmen's decision-making may have unanticipated consequences, such as increased jail crowding, in the absence of other, offsetting, changes in the jurisdiction's pretrial release practices.

CHAPTER V.

CONCLUSIONS AND RECOMMENDATIONS

A. The Economics of Bail Bonding

If bondsmen are to be used in the pretrial release system, it is important to understand the economics of the bonding industry, as discussed in the preceding chapter. Such understanding will help ensure that bondsmen are used in the most effective manner possible in jurisdictions that rely on commercial bond as key components of their pretrial release systems.

Bondsmen can be expected to take more risks in their bonding decisions when their businesses are more profitable. Thus, if a jurisdiction has a large volume of bonds and relatively lenient policies for collecting forfeitures, one expects that riskier defendants will make bond than in a community where operating conditions for the bonding industry are less favorable. One consequence of this is that actions that increase the costs of bonding -- such as adopting more stringent policies regarding forfeitures collection -- may, by reducing profits, make bondsmen less willing to take risks. As a result, defendants who might previously have been bonded would be detained, unless the jurisdiction takes offsetting actions, such as increasing its use of nonfinancial release options, for those defendants.

Analysis of the economics of bonding helps explain the relatively high detention rates that many jurisdictions experience for defendants with low bonds. Particularly in communities with high rates of nonfinancial release, bondsmen may perceive that defendants with low bonds were viewed by judges as posing greater-than-average release risks; otherwise, such defendants would presumably have been released on their own recognizance or through similar mechanisms not involving money bonds. Because these somewhat risky bonds provide only small fees (because of their low amounts), bondsmen may be reluctant to write them. This situation can be compared with jurisdictions where bonds are set for most defendants. Under those conditions, at least theoretically, most persons with low bonds are likely to be good release risks, and bondsmen can make a sizeable profit from the accumulation of small fees on many safe bonds, which will more than compensate for the occasional forfeitures.

Thus, in a "reform" jurisdiction, which makes extensive use of nonfinancial release options, the defendants for whom bond continues to be set may be worse off than before the reforms. This is because bondsmen will find it harder to make a profit after the reform and, consequently, can be expected to take fewer risks. As a result, defendants for whom bond is set may have more difficulty making bond than previously. Hence, although

the reforms benefit the many defendants who secure release without having to pay a fee, they may harm others.[44]

As this analysis suggests, unanticipated problems may arise in jurisdictions that try to combine the expanded use of nonfinancial release alternatives, with the continued operation of a money bond system. Some jurisdictions have avoided those problems by abolishing surety bonding altogether, either directly (as in Kentucky and Wisconsin, where bail bonding for profit is illegal) or indirectly (as in Illinois and Oregon, where the availability of 10 percent deposit bond as a release option has effectively ended surety bonding).

The problems could also be addressed, however, by taking actions to assure the profitability of bond-writing for the defendants in question. For example, the permissible bonding fees for small bonds could be increased in jurisdictions where defendants with such bonds are now detained at unnecessarily high rates.[45] Alternatively, bondsmen's costs for writing such bonds could be reduced, through lenient forfeitures collection policies by the court for those bonds.

Because of the problems that have arisen in jurisdictions where new release alternatives were introduced and surety bond was retained as well, some persons have concluded that bail reform should be implemented on an "all or nothing" basis: either alternatives to surety bond should be extended to all defendants, with surety bond eliminated; or surety bond should be used for most defendants, with release-on-recognizance limited to those defendants who cannot afford money bail (so that own recognizance release would not reduce the bond market and, thus, bondsmen's profits).[46]

B. Regulation of Bail Bonding

The economics of bail bonding should be borne in mind when limitations on bonding practices are under consideration. The regulatory restrictions on bondsmen often preclude practices that other businesses would consider essential, such as soliciting clients in places where they are most likely to be found (for defendants needing bond, such places are jails and courts). Also, although credit for the bond premium may be extended or collateral terms negotiated, bondsmen's fees and limits on collateral are often set by the state. Additionally, bondsmen are often not allowed to engage in certain sorts of advertising.

These and similar limitations probably increase the bondsmen's costs of operations. To avoid unnecessarily increasing these costs further -- which, as discussed in the preceding section, may result in more conservative bonding decisions -- jurisdictions may wish to focus their regulatory activities on the elimination

of questionable bail bonding practices.[47] This would require followup actions by regulatory agencies in response to complaints about corrupt or unbusinesslike bonding practices. Although such practices may be infrequent in many jurisdictions, it is nevertheless important to respond to them when they occur.

One such abuse concerns bondsmen's inability to pay bond forfeitures that have been ordered. In some jurisdictions bondsmen have declared bankruptcy, leaving many forfeitures unpaid. One way to avoid this would be to require a deposit from bondsmen in an amount sufficient to cover forfeitures, as is now done in certain places. Moreover, bondsmen could be forbidden from writing additional bonds whenever their deposits fell below a certain sum.

A related problem concerns the failure to require bondsmen to pay the full amount of the bond forfeiture. While such actions are considered desirable by many persons, more stringent collection policies are likely, by raising operating costs, to make bondsmen less willing to write bonds for riskier defendants. Thus, increased detention may be an unanticipated consequence of tough forfeitures collection policies, unless the jurisdiction takes offsetting actions, such as expanding the use of nonfinancial release alternatives.

As communities face continuing financial pressures, there is a potential danger that forfeitures collection practices will be viewed as a means of generating revenue rather than as a way of providing an incentive for bondsmen to locate missing defendants. Providing such an incentive for bondsmen would seem to require not only an insistence on full payment of forfeitures by bondsmen who make no effort to find missing defendants but also the remission of forfeitures to bondsmen who make considerable efforts to locate fugitives, even if those efforts fail. In this way bondsmen would be encouraged to locate fugitives as well as enabled to take greater risks in their bonding decisions.

The issue of proper bond forfeiture procedures is not addressed in the "model" bail bonding statute developed by the National Association of Insurance Commissioners (NAIC). Because of the recurrent concern with this topic, NAIC may wish to cover it in any future revision of the model statute.

Another commonly mentioned problem involving bondsmen concerns the return of collateral. Besides responding to individual complaints, regulatory agencies may need to promulgate standards regarding handling of collateral. Such standards could include, for example, a requirement that bondsmen give each person who posts collateral a written statement (perhaps prepared by the regulatory agency) indicating the purpose of collateral, the conditions under which it will and will not be returned, and whom to contact in the regulatory agency to file a complaint.

In addition to administrative sanctions for collateral abuses, criminal penalties could be provided as a further deterrent to unscrupulous actions.

Once a jurisdiction has decided upon the nature of the bonding abuses it wants to eliminate and developed appropriate regulations for trying to do so, it must consider the penalties to be imposed for violations. In the past these have included criminal penalties, such as fines and prison terms, as well as administrative punishments.

The threat of license suspension or revocation is likely to be a very effective and easily implemented enforcement mechanism for reducing bail bonding abuses. Thus, failure of regulatory agencies to monitor bondsmen's activities is particularly unfortunate. The low staff levels assigned to bail bonding oversight in many jurisdictions virtually assure lax monitoring of the industry. However, even a small regulatory staff could have a major impact on bonding operations, if (1) it became widely known that any complaints about bondsmen's practices could be made to the agency, and (2) enough complaints received followup attention for the bondsmen to take the agency's involvement seriously.

Many of the persons interviewed during this study expressed concern about lax enforcement of bail bonding regulations. Often this concern was voiced by bondsmen, who thought that a few bondsmen engaged in practices that gave the entire industry a bad name. According to these bondsmen, more rigorous enforcement by regulatory agencies is needed in response to this problem.

Besides responding to bail bonding abuses, some regulatory agencies may need to change certain of their procedures. Because of the great variation found in regulations, as discussed in Chapter II, such agencies may be able to adopt the approaches used in other states. One revision needed in many jurisdictions concerns the licensing examinations for bondsmen. A number of states require bondsmen to pass a test designed for <u>insurance</u> agents. As a result, the examination may have very few questions (or none) about <u>bail bonding</u>. Unfortunately, knowledge of the insurance business alone does not equip an individual to be a bondsman.

In addition to effective regulation by state agencies, there is a need for bondsmen and insurance companies to engage in greater self-policing of the industry. This could be patterned, for example, after the self-policing of attorneys through local bar associations. Such improved self-policing of the bonding industry is a stated goal of the bondmen's national association -- Professional Bondsmen of the United States (PBUS) -- and should be encouraged.

C. Services Provided by Bondsmen

In the course of their business activities, bondsmen provide what they and many others regard as a variety of services to their jurisdictions. First, they provide an alternative to incarceration for many defendants who might not otherwise be released. By releasing defendants on money bond, communities can avoid the cost of detaining them during the pretrial period. This may be of particular concern in jurisdictions where jail crowding is a problem. (It is noteworthy that strikes by bondsmen have resulted in jail crowding in the past.[48] This supports the view that bondsmen's actions may alleviate jail crowding.)

An additional service provided by bondsmen is to retrieve defendants who failed to appear for court. Although many defendants are easily found, as discussed in Chapter III, others may require extensive search. Bondsmen may conduct such searches themselves or employ "bounty hunters" to help locate missing defendants.

The fact that the arrest powers of bondsmen or their agents sometimes exceed those of law enforcement officers has been a source of great comment and, in some jurisdictions, considerable criticism.[49] Nevertheless, the law in most jurisdictions gives such powers to bondsmen, who can apprehend fugitives across state lines and return them to court without following formal extradition procedures. This difference in retrieval authority for bondsmen and public law enforcement officials, combined with scarce resources commonly available to local courts and law enforcement agencies for serving warrants, may create an incentive to rely on bondsmen as much as possible to return defendants to court, particularly if there is reason to think those defendants may have left the state.

Fugitive retrieval by bondsmen can be viewed as part of the broader criminal justice system function of maintaining social control over defendants before trial.[50] Bondsmen can also advance the goals of the criminal justice system by reminding defendants of court dates and securing the involvement of family and friends in the defendant's case by requiring third party indemnitors for the bond. In addition, some bondsmen stressed during interviews that defendants may actually have a fear of the bondsmen that acts as a deterrent to failure-to-appear. While defendants might discount the possibility of apprehension by overworked public law enforcement officials with large caseloads, they might in contrast expect the bondsman to seek them out actively in order to avoid a personal financial loss from bond forfeiture.

A final "service" of bondsmen, although a questionable one to those who believe in full accountability for public officials,

is to provide a buffer for judges against adverse public criticism for their pretrial release decisions. As discussed in Chapter I, a surety bond permits a judge to share release responsibility with the bondsman and with any third parties involved in the bond as cosigners or providers of collateral. If the defendant is subsequently apprehended for a heinous crime committed during the release period, public criticism may be diffused, rather than focused solely on the releasing judge.[51]

D. Alternatives to Bondsmen

As discussed in Chapter I, this study was designed to analyze the activities of bail bondsmen, not to provide a comparative assessment of bail bonding vis-a-vis other pretrial release mechanisms. Nevertheless, this study would be incomplete without some discussion of the alternatives to bail bondsmen.

Additionally, the interviews with bondsmen provided perspectives on certain of these alternatives that are rarely considered. Although we cannot assess the validity of these perspectives, we think it is important to present them, so that decisionmakers can have the benefit of a variety of viewpoints when they are assessing their pretrial release policies and considering possible changes in them. Hence, the following discussion should be viewed as an exploratory one, designed to raise questions for future consideration and reflective debate.

One alternative to commercial bail bonding is deposit bond. Under deposit bond the defendant post a percentage of the bond (usually 10 percent) with the court. Most of this "deposit" (usually 90 percent) is returned, if the defendant appears for all court dates. The defendant or person who posted the deposit is liable for the full amount of the bond, if a court appearance is missed.

A limitation that the deposit bond system shares with the surety bond system is that the defendant must post a certain amount of money to secure release. Thus, indigent defendants who lack the 10% bond fee may be detained.

In comparison to the surety bond system, deposit bond has the advantage that defendants who appear for court incur lower bond costs (usually about one percent of the bond, versus ten percent or so for a bondsman's fee). Additionally, defendants may have greater financial incentives to appear for court, because a large percentage of their deposit will then be refunded,[52] whereas the bondsman's fee is not returned. However, although the bondsman's fee is not refunded, any collateral posted to back the bond will be released only at the end of the case. Thus, some defendants' desire to have the bondsman release collateral may provide an incentive for court appearance.

In some cases deposit bond could arguably decrease the financial incentives that some bonded defendants would otherwise have to appear for court. This would occur if a fugitive in reality risked only the loss of the 10 percent posted with the court for a deposit bond but risked loss of the 10 percent bondsman's fee and any collateral posted for a surety bond. The reality of this theoretical disincentive will, of course, depend on the way judges in any given jurisdiction enforce the collection of the 90 percent balance of the bond from absconding defendants released on 10 percent deposits.

If the court does not collect the full bond amount from defendants who fail to appear, deposit bond will constitute (as described by bondsmen) a "90 percent reduction in bond." The degree to which this occurs, either through lack of enforcement of forfeiture rights or due to defendants' lack of assets, once apprehended, is little documented and highly controverted. If it does occur, bond amounts may increase, as judges try to offset the bond price reduction. Moreover, bondsmen argue that unless efforts are made to apprehend fugitives released on deposit bond, failure-to-appear rates may increase, as defendants learn that failure-to-appear by itself carries little risk of apprehension and return to court.

Unfortunately, little data is available for assessing these various issues and viewpoints regarding deposit bond. Moreover, the three major existing analyses of jurisdictions with deposit bond systems are each based on data that is now more than a decade old. Analysis of Illinois found that bond amounts increased but failure-to-appear rates did not after introduction of deposit bond.[53] In two Massachusetts jurisdictions, neither bond amounts nor failure-to-appear rates increased when deposit bond was adopted, although release rates rose.[54] In "Metro City," a large northeastern city, bond amounts increased and release rates stayed about the same after a deposit bond system began (failure-to-appear rates were not analyzed).[55]

Besides deposit bond, another common alternative to surety bond is the release of defendants on their own recognizance (O.R.) or through other mechanisms that do not involve money. Often such release alternatives have been implemented in connection with pretrial release programs, which interview defendants and recommend those who meet program criteria for release without bond.

Many of the bondsmen interviewed during this study supported the concept of O.R. release, although they often commented that in their opinion it had been applied "inappropriately" in many cases. In the view of most bondsmen interviewed, O.R. release should be limited to indigent defendants. Instead, say the bondsmen, O.R. release has commonly been granted to defendants

who could afford bond, while indigent defendants have remained in jail. This occurs when poor defendants lack the "strong community ties" needed for O.R. release eligibility in many jurisdictions or when pretrial release programs have been reluctant to recommend nonfinancial release for high-risk indigent defendants.

A related aspect of the consideration of alternatives to bail concerns the use of bail as a means of preventive detention. Although bondsmen typically view the bond mechanism as one which permits the release of defendants, judges may set especially high bonds with the expectation that defendants will be unable to post them and thus will be detained until trial. Such sub rosa preventive detention has sometimes been attributed to the lack of outright preventive detention authority in some states for judges. However, certain jurisdictions where such detention authority is now granted by statute have failed to make much use of it, in part because of the greater ease of detaining defendants by continuing to set high money bonds than by using the more cumbersome preventive detention mechanism.[56] This suggests that analysis of alternatives to surety bond should include detention alternatives, such as preventive detention, as well as release options, such as deposit bond or own recognizance release.

E. Cost-Effectiveness Considerations in the Use of Bondsmen

When a jurisdiction uses bondsmen, the costs of its pretrial release system are partly borne by defendants through their payments of bond premiums. These defendant payments support the various services provided by bondsmen to the local criminal justice system. As discussed earlier, these services may include -- depending on the individual bondsman's specific business practices -- notifying defendants of court dates, locating defendants who failed to appear and returning them to court, and assuring the involvement of third parties in a defendant's case through the collateral and cosigner requirements of the bond.

Clearly, all the services provided by bondsmen can be obtained in other ways, for example, through establishment of pretrial release programs that perform those functions. However, because such programs are usually supported by tax revenues, their use typically increases the share of the cost of the pretrial release system borne by the general public and reduces the share paid by defendants. The extent of such a cost transfer has not been quantified, however, nor for that matter have the publicly supported regulatory and administrative costs of operating a bail bond system been determined.

If the pretrial release system is considered by itself alone, it is arguably unjust for defendants to be required to pay for that system. Pretrial defendants have, after all, only

been charged with crimes, not found guilty of them. From this perspective, to impose a money bond on the pretrial accused seems inequitable.[57] However, when the pretrial release system is considered within the context of a jurisdiction's other expenses -- for police and fire protection, education, social service programs, etc. -- and the revenues available to meet those expenses, requiring defendants to assume the burden for part of the costs of the pretrial release system, while still a legitimate cause for concern, on balance may seem less unfair: the real alternative faced by a financially strapped community may be an action that would cause greater harm to another group of its citizens. Hence, while having defendants bear part of the costs of the release process may not reflect justice in the ideal sense, it may nevertheless reflect a realistic, practical choice, given the fiscal constraints facing the jurisdiction.

Questions of cost allocation must also be considered in connection with the continuing controversy over bondsmen's authority to apprehend fugitives. Many persons have questioned the desirability of using bondsmen to return fugitives to court. According to the American Bar Association:

> A system of public prosecution ought not to depend upon private individuals, using private means, to bring defendants before the court....One would be hard put to think of a function less appropriately delegated to private persons than the capture of fleeing defendants.[58]

Clearly, the apprehension of all fugitives could be performed by public individuals, i.e., law enforcement officers. However, this would require either additional funds or reallocation of the current duties of law enforcement officers, so that they could perform the increased apprehension now performed by bondsmen. Moreover, the laws regarding extradition of fugitives would have to be changed in many jurisdictions, if law enforcement officers were to be enabled to return fugitives as easily as bondsmen can. Alternatively, if existing extradition procedures were retained, jurisdictions would have to accept attendant delays in the return of fugitives.

In addition to cost factors, any release system embodies equity considerations. Many of the advocates of the elimination of money bail argue that greater release equity will be achieved if money is not used in the release process.[59] With the elimination of money as a release consideration, they argue, poor defendants would no longer be detained because of inability to pay the bonding fee. However, it is not clear that making release harder to secure for defendants who <u>have</u> money will necessarily facilitate release for those who do not. Money bond can often provide a way for defendants with sufficient resources to secure release relatively easily and quickly. This is particularly so in juris-

dictions with bond schedules, although such schedules have been criticized as based on charge alone and thus not reflecting "individualized" release decisions. It has also been argued that use of bail schedules is a disservice to the public, because it permits dangerous defendants who have assets to obtain their release.

It could be argued that a deposit bond system improves on a surety bond system by eliminating bondsmen while having defendants continue to pay for the pretrial release system, so that costs to the public are not increased. Unfortunately, as discussed in the preceding section, little data is available across jurisdictions about the results of deposit bond systems -- in particular, the extent to which payments by defendants in fact support the costs of the system, the extent to which fugitives are returned to court, and the impact on detention rates. Hence, the overall efficacy of a deposit bond system vis-a-vis a surety system has not been adequately assessed at this time.

Although several states have demonstrated that bondsmen can be eliminated without egregious effects, one should not assume that the elimination of bonding for profit will by itself effect greater equity or a higher release rate. In fact, the opposite may be true. Actual pretrial release practices in a jurisdiction that has adopted bail reforms may be inequitable, particularly if the local pretrial release program uses very restrictive eligibility and release recommendation criteria.[60] A jurisdiction with such a program may have detention rates exceeding those of a comparable jurisdiction that relies extensively on bail bondsmen.

Looking at the presence or absence of nonfinancial release alternatives ("bail reform") or of bail bondsmen is simplistic. The essential issue is not whether a jurisdiction has implemented reforms but rather the outcomes (including release outcomes, equity considerations, and rates of failure-to-appear and pretrial crime) of the overall release system. While the continuation of a bond system may be detrimental, one should not automatically assume that all money bond systems, however implemented, will necessarily be so and that all reforms will unfailingly constitute improvements. Indeed, many reform jurisdictions have crowded jails, which before the reforms had been considered caused by excessive reliance on bondsmen. Implementing the reforms in those cases did not eliminate the jail crowding problem.

Once one views bondsmen not as evils in themselves[61] but as businessmen whose role in the criminal justice system may or may not be more beneficial than detrimental depending on local variables, it is easier objectively to consider a variety of alternatives for pretrial release practices, encompassing a broad range of potential ways of dealing with bail bondsmen.

F. Recommendations

(1) Regulatory agencies should closely monitor the bail bonding industry and actively enforce regulations designed to eliminate bonding abuses. At the same time, regulatory agencies should avoid promulgating rules, such as excessively detailed reporting requirements, whose primary effect would be to increase the costs of operation for all bondsmen without necessarily reducing bonding abuses.

(2) Licensing examinations for bondsmen should assess their ability to handle bonding activities, not simply insurance matters.

(3) Members of the bonding industry should engage in greater self-policing efforts, perhaps modeled after similar activities by local bar associations regarding the practices of attorneys. Additionally, insurance companies should refuse to accept as agents bondsmen with outstanding forfeitures in any jurisdiction unless there is strong reason to believe those forfeitures will be paid or the bonds will be otherwise exonerated.

(4) Research should be undertaken on the impact of deposit bond systems. This should include the magnitude of failure-to-appear rates, whether defendants return to court, whether bond forfeitures are collected when defendants do not return, whether cases are disproportionately dismissed at the point of failure to appear, the levels of bond set for various charges, the extent to which defendants are unable to make bond, the costs of operation, etc. At present little information is available about the overall impact of deposit bond, and the information that does exist is conflicting across jurisdictions.

(5) Research should be undertaken on pretrial release outcomes in jurisdictions without bondsmen. This would help other communities assess the advantages and disadvantages of eliminating bondsmen. Such analysis should consider the impact on detention and failure-to-appear rates as well as the costs to the jurisdictions and the savings to defendants.

(6) Yet additional research activities that should be considered include analyses of:

- bail bonding practices in other jurisdictions, such as rural and suburban areas as well as the state of Texas, where bail bonding regulation is done differently than in other states;

- the costs of alternative pretrial release mechanisms;

- the extent to which bonds are ordered forfeited when defendants do not return to court within the time allowed by law, and the extent to which forfeitures are paid;

- the role of bounty hunters in the fugitive retrieval process (e.g., who they are, what they do, how they find defendants, special problems posed by defendants who cross state or national boundaries, their relationship with the police, etc.);

- the day-to-day activities of the state insurance departments' staff members who are charged with regulating bail bonding;

- whether the fact that regulation is primarily done at the state level creates problems, because individual bondsmen may move between states or operate in several states (Is better information-sharing across states needed? How could this be accomplished?);

- the precise activities of insurance companies, including analysis of the impact when a major bond-underwriting company goes out of business; and

- defendants' perspective on bail bondsmen (and, indeed, on other aspects of the pretrial release process).

FOOTNOTES

1. Davis notes that few studies of the criminal justice system discuss bondsmen, although many books examine "the police, the judge, the lawyer, the jury, the jailer and even courtroom workers." David Scott Davis, Deviance and Social Isolation: The Case of the Falsely Accused, unpublished Ph.D. dissertation, Princeton University, 1982, p. 64.

2. National Association of Pretrial Services Agencies, Performance Standards and Goals for Pretrial Release and Diversion: Pretrial Release (Washington, D.C.: National Association of Pretrial Services Agencies, 1978), p. 25.

3. Throughout this study, the terms "money bond," "money bail," "bail," and "bond" are used interchangeably to mean financial release conditions. "Commercial bonding," "commercial bail bonding," and "bail bonding" are all used to refer to the posting of a money bond through a bondsman. This is in contrast to deposit bond, where the posting of bond is done directly by the defendant. The term "pretrial release" includes all forms of release before trial, e.g., own recognizance, supervised release, money bond, etc.

4. See the various issues of the newsletter published by the Professional Bondsmen of the United States, Houston, Texas.

5. Bondsmen have traditionally been viewed as responsible for assuring defendants' appearance in court, not for preventing pretrial criminality. A variety of issues relating to pretrial criminality are, however, being studied as part of the research project, Public Danger as a Factor in Pretrial Release, Grant Number 83-IJ-CX-0008, awarded to Toborg Associates, Inc., by the National Institute of Justice. See, for example, the following monographs: Barbara Gottlieb, A Comparative Analysis of State Laws, Research Report of the National Institute of Justice, July 1985; Mary A. Toborg, John P. Bellassai, et al., Crime-on-Bail and Pretrial Release Practices in Four Cities, February 1986; and Final Report Summary, forthcoming in 1986.

6. The type of data collection and analysis required to deal with this issue in a quantitative and objective manner is quite different from that needed to assess bondsmen's day-to-day decision-making within the context of their business activities. Various studies have identified a wide range of corrupt practices by individual bondsmen -- including failing to return collateral promptly, overcharging clients, paying kickbacks to jailers, bribing judges, participating in gambling activities or rackets, associating with persons involved in organized crime, using illegal methods to retrieve skips, and fencing stolen goods. For discussions of these practices, see, for example, Davis,

op. cit., p. 177; Ronald Goldfarb, Ransom: A Critique of the American Bail System (New York: Harper and Row Company, 1965), pp. 92-110; Wayne H. Thomas, Jr., Bail Reform in America (Berkeley: University of California Press, 1976), pp. 15-17; and Paul B. Wice, Freedom for Sale: A National Study of Pretrial Release (Lexington, Massachusetts: D.C. Heath and Company, 1974), pp. 60-63. In addition, many major newspapers over the years have featured "exposes" on bail bonding abuses in their locales which parallel the practices discussed by the authors listed above. The reader is referred generally to The Pretrial Reporter (a newsletter of the Pretrial Services Resource Center, Washington, D.C.) for summaries of recent newspaper articles. Note that these various discussions do not permit estimation of the extent of corruption in the bonding industry as a whole; rather, these discussions tend to focus on specific bondsmen in specific jurisdictions.

7. A distinction is also commonly made between fidelity bonds and surety bonds. A fidelity bond guarantees the honesty of an individual (e.g., cashier), with the insurer agreeing to reimburse the insured party for loss due to dishonesty of the bonded person. A surety bond guarantees that a contract, act or other undertaking (e.g., appearing for court) will be fulfilled. Jerry W. Caswell, Bail and Bail Bonds: A Limited License Non-Credit Insurance Course for Agents (Gainesville, Florida: University of Florida, 1974), p. 8.

8. Ibid., pp. 9-11, discusses these points. Caswell also cites drawbacks of the personal surety system, including (1) the surety assumes a liability without payment for the risk of loss; (2) the protection of the surety's assets depends on the performance of the principal, a person over whom the surety may have little control; (3) peaceful relations between the surety and the principal may be disrupted; (4) the wrath of the obligee may fall on the surety; (5) the courts, under the "favored debtor" doctrine, might release the personal surety upon the slightest excuse and leave the obligee unprotected; (6) personal sureties might abscond with their assets or become insolvent before the principals; (7) the surety might help the principal defraud the obligee, especially if the surety was a relative or friend of the principal; and (8) persons with sufficient wealth to serve as personal sureties might be hard to find. Ibid., pp. 16-18.

Vestiges of the personal surety system survive today. For example, a defendant may borrow money from friends or relatives to post bond, rather than seeking the services of a bondsman. Also, the court may release a defendant into the "third party custody" of relatives or friends. Although this does not require posting money, the court's intention is clearly the same as with personal sureties:

to enlist the efforts of a person known to the defendant to help assure the defendant's appearance in court. Finally, commercial bondsmen themselves have often incorporated aspects of the personal surety system into their own operations. For example, by requiring cosigners on the bond or collateral that is often provided by relatives and friends of the accused, the bondsman hopes to increase the likelihood that the defendant will appear for court or, if not, that persons who know the defendant will help the bondsman later with location tasks.

9. See, for example, Helen Reynolds, "The Economic Role of the Bail Bond Firm," Working Paper, The Center for Policy Studies, University of Texas at Dallas, draft dated January 1981, pp. 5-6.

10. Andreas De Rhoda, "Whither the Bail Bondsman?", The National Law Journal, Volume 1, No. 19 (January 22, 1979), p. 16; and Davis, op. cit., p. 33.

11. Other states excluded because of small population size were Delaware, Hawaii, Idaho, Montana, Nevada, New Hampshire, North Dakota, Rhode Island, South Dakota and Vermont.

12. Insurance companies may, of course, require their agents to report to them on their bail bonding activities, even though such data are not filed with state regulatory agencies.

13. Some states also prohibit other individuals (e.g., attorneys, criminal justice officials) from engaging in certain practices involving bail bonding.

14. National Association of Insurance Commissioners, Uniform Bail Bondsmen Licensing Act, Section 3.H.

15. The small staff allocation may also explain why few regulatory agencies conduct audits of bail bondsmen. Only five states (Arkansas, Colorado, Indiana, Michigan and Nevada) reported conducting such audits.

16. Other studies that have concluded that bondsmen spend a considerable amount of time on their work include Davis, op. cit., pp. 267-269; and Paul B. Wice, op. cit., pp. 58-59.

17. Forrest Dill, "Discretion, Exchange and Social Control: Bail Bondsmen in Criminal Courts," Law and Society Review, Volume 9 (1975), p. 663, estimated that bondsmen received "hard" collateral for only about 5 to 10 percent of the bonds written.

18. Another situation in which more than one bondsman may be involved on a single bond occurs with "transfer bonds." In this case one bondsman will contact another bondsman in a different jurisdiction to get a bond posted there.

This situation commonly arises when a defendant's parents contact a local bondsman about a bond for a child who has been arrested in another jurisdiction.

19. If there is an appeal of the verdict, this will commonly require a new bond.

20. John J. Murphy, "Revision of State Bail Laws," Ohio State Law Journal, Volume 32 (Summer 1971), pp. 456-461, cites several instances of fugitive retrieval involving bondsmen's harsh treatment of defendants.

21. One bondsman interviewed during this study was sending out 3,000 fliers (which included a picture) about a fugitive who failed to appear on a $100,000 bond. These circulars were being sent around the country to bondsmen, skip-tracers and other persons who might come into contact with the defendant.

22. Steve Gettinger, "Wanted: Dead or Alive. Papa Ralph Has Tracked Down 10,000 Fugitives Beyond the Reach of the Law. You Can't Escape This Bounty Hunter." Rolling Stone, August 7, 1980, p. 34.

23. Ibid., p. 52.

24. Ibid., p. 34.

25. Taylor v. Taintor, 16 Wall. (U.S.) 366 (1873), as cited in Charles A. Donelan, "The Bondsman's Right to Arrest," FBI Law Enforcement Bulletin, December 1972 and January 1973, pp. 4-5. Interestingly, this case upheld a forfeiture judgment against a bondsman whose client had been imprisoned in another state while awaiting trial. The Court held that the bondsman had sufficient authority to have assured the defendant's appearance in court. Failure to do so reflected the surety's neglect, for which bond forfeiture had been appropriately ordered. Today, most jurisdictions exonerate bonds or defer collection of the forfeiture when defendants are imprisoned in other jurisdictions.

26. Donelan, op. cit., p. 5.

27. Some states, such as Oregon, have passed legislation that limits bondsmen's fugitive retrieval powers.

28. Fitzpatrick v. Williams, 46 F.2d 40 (5th Cir. 1931), as quoted in Murphy, op. cit., p. 459.

29. Shine v. Shine, 204 So.2d 826 (Ct. App. Ala. 1967), as quoted in Murphy, op. cit., p. 461.

30. Ibid.

31. De Rhoda, op. cit., p. 17, reports a similar percentage.

32. Such proposals for harsher court responses to failure-to-appear have also been made by pretrial release agencies and other proponents of bail reform.

33. De Rhoda, op. cit., p. 16.

34. Wice, ibid., p. 57.

35. David R. Hinden, "The Role of the Bail Bondman in the Connecticut System of Pretrial Release," unpublished paper, Yale Law School, 1971, p. 20.

36. Consideration was given to selecting a third sample from defendants who failed to appear for court, so that forfeitures practices could be studied in detail. On balance, however, it was viewed as more important to concentrate the study's resources on analysis of bond-writing decisions and bond conditions (e.g., collateral, cosigners and credit) -- which affect comparatively large numbers of defendants -- than on analysis of the relatively rare event of failure-to appear for court.

37. Representatives of the bonding industry suggested that we try to acquire information from bondsmen's records. Whenever possible, we obtained access to the bondsmen's files and abstracted the needed data ourselves. In some cases bondsmen compiled the data, because they said it was easier for them to look up the few items of information needed for each case than to explain their filing system to us. Although the compilation of information by bondsmen offered the possibility of bias (either conscious or inadvertent), we have no reason to think that any significant bias was introduced. The information provided by bondsmen who compiled the data for us was very similar to the information obtained when we consulted bondsmen's files directly. It is noteworthy that bondsmen's records were sometimes more complete than court files. We found several instances where bondsmen had records (including official notices from the court) of failures to appear for defendants whose court files contained no indication of missed court dates.

38. By site, bondsmen who provided data from their files accounted for the following percentages of all bonded cases studied: Fairfax, VA, 75 percent; Indianapolis, IN, 16 percent; Memphis, TN, 34 percent; and Orlando, FL, 64 percent. In Indianapolis one bondsman, accounting for 23 percent of all bonded cases studied, indicated that data had been mailed to us; however, we never received it. One reason for the relatively low percentage in Memphis is that three bondsmen, accounting for 29 percent of the bonded cases in the sample, had gone out of business by the time data collection began.

39. An econometric analysis of the market for bail was also conducted. Results appear in the "Supporting Material" volume of the full-length Final Report.

40. See, for example, Wayne H. Thomas, Jr., op. cit., p. 17.

41. Industry structure was derived from the defendant sample. Because that sample consisted only of defendants charged with selected felony offenses, the resulting data do not reflect the total market for bail bonds.

42. Note that this discussion considers detention rates only for defendants with bonds set, not for all defendants. Overall detention rates will, of course, depend on the extent to which defendants are released without bond as well as the extent to which defendants with bonds set secure release.

43. The samples in San Jose and Oklahoma City were limited to the same felony charges as the other four sites. Also, the samples were selected from the July 1 -- December 31, 1979, time period.

44. Roy B. Flemming, Punishment Before Trial: An Organizational Perspective of Felony Bail Processes (New York City, N.Y.: Longman, Inc., 1982), pp. 130-133.

45. Reynolds, op. cit., p. 40, discusses a variable fee system, with the percentage charged dependent on the riskiness of the defendant.

46. See, for example, Murphy, op. cit., p. 451. A bondsman interviewed during this study expressed the same opinion: "We should have 'good' bail or no bail."

47. See Chapter I, footnote 6, for references to publications that discuss bail bonding abuses.

48. Daniel J. Freed and Patricia M. Wald, Bail in the United States: 1964 (Washington, D.C.: U.S. Department of Justice and Vera Foundation, May 1964), p. 27, and DeRhoda, op. cit., p. 1.

49. See, for example, Murphy, op. cit., pp. 451-486.

50. Dill, op. cit., pp. 639-674.

51. Frederic Suffet, "Bail Setting: A Study of Courtroom Interaction," Crime and Delinquency, Volume 12 (1966). Note that the judge is also buffered from any subsequent criticism due to the defendant's inability to secure release. Although diffusion of responsibility has certain advantages for judges, it has been criticized by those who want greater judicial accountability for release decisions. See, for

example, National Association of Pretrial Services Agencies, op. cit., p. 38.

52. In some places the deposit, instead of being returned to the defendant, may be transferred to the defense attorney as partial payment for legal fees. Reportedly, defense attorneys are often the strongest advocates of deposit bond in such jurisdictions.

53. Murphy, op. cit., p. 425, and John E. Conklin and Dermot Meagher, "The Percentage Deposit Bail System: An Alternative to the Professional Bondsman," Journal of Criminal Justice, Volume 1.

54. Conklin and Meagher, ibid., pp. 309-311.

55. Roy B. Flemming, et al., "The Limits of Bail Reform: A Quasi-Experimental Analysis," paper prepared for the 1979 Annual Meeting of the American Political Science Association, pp. 13-17.

56. See, for example, Barbara Gottlieb, Public Danger as a Factor in Pretrial Release: Practitioner Perspectives, monograph prepared for the National Institute of Justice, U.S. Department of Justice, by Toborg Associates, Washington, D.C., April 1985, pp. 25-26; and Nan C. Bases and William F. McDonald, Preventive Detention in the District of Columbia: The First Ten Months (Washington, D.C.: Georgetown Institute of Criminal Law and Procedure and Vera Institute of Justice, March 1972).

57. This problem could also be resolved by refunding the bondsman's fees to defendants found not guilty or for whom the fees were considered too high in relation to the punishment imposed upon conviction. Such actions might also reduce the extent of "overcharging" by police and prosecutors as well as encourage early prosecutorial screening of cases, because the jurisdiction would incur costs if defendants paid high bond premiums for charges that were subsequently shown to have little merit.

58. American Bar Association, Standards Relating to the Administration of Criminal Justice, Chapter 10, "Pretrial Release" (Washington, D.C.: American Bar Association, 1978), p. 39.

59. See, for example, National Association of Pretrial Services Agencies, op. cit.

60. Donald E. Pryor, Practices of Pretrial Release Programs: Review and Analysis of the Data (Washington, D.C.: Pretrial Services Resource Center, February 1982), pp. 24-44, passim.

61. Dill observes that "although the bondsman's powers are lawful, his very existence strikes some observers as parasitical," op. cit., p. 643.

APPENDIX

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