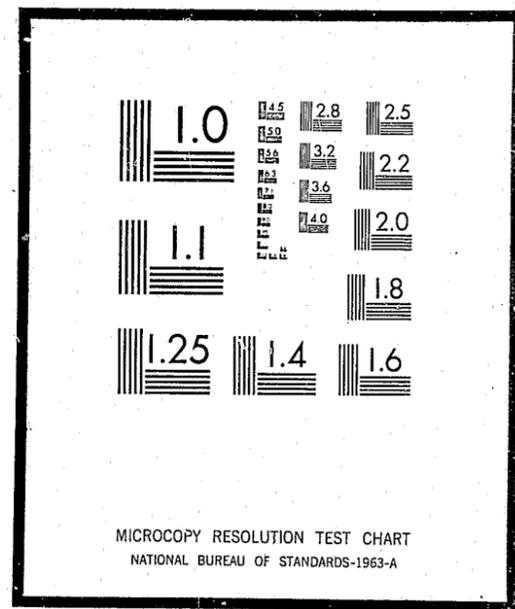


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BAIL AND ITS REFORM: A NATIONAL SURVEY

By
PAUL BERNARD WICE

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ABSTRACT

To present a comprehensive and empirical investigation of pretrial release in the United States, the author conducted intensive interviews (1970-71) in 11 cities and developed data (statistics pertain to 1968) from a mailed, 72-city questionnaire. Analyzed are organizational and procedural features not only of traditional, bail-oriented pretrial release systems but also of reform programs designed to free more defendants on their own recognizance. Release, detention, forfeiture, and rearrest rates are computed for traditional and reform programs. Key factors influencing those rates, as well as the relative effectiveness of pretrial release in various cities, are explored. Individuals involved in the pretrial release process are described, their roles explained, and their attitudes discussed. A major conclusion of the report, whose full-length version is over 500 pages, is that reform projects can outperform the traditional system of bail and bondsmen by achieving lower forfeiture and rearrest rates despite releasing more defendants. Community ties of defendants and pretrial supervision of the accused are of prime importance in attaining low forfeiture and rearrest rates, in contrast to such traditional considerations as the defendant's past criminal record and the seriousness of the crime with which he is charged.

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INTRODUCTION

This report reflects the results of a comprehensive and empirical investigation of pretrial release in the United States. The primary objectives were to determine the attitudes of a nationwide cross section of knowledgeable officials toward the administration of bail in their respective communities; to obtain the operational details of bail systems in a wide range of cities, including the reasons for variations in effectiveness of these systems; to examine the performance of bail reform projects as an alternative to traditional money bail procedures.

Parts I and II of this report are based on extensive interviews (140), courtroom observations, and docket examinations in 11 large cities during 1970 and 1971. Focusing on how the traditional bail system operates in those cities, Part I describes the facilities, procedures, and personnel involved. Part II evaluates bail reform projects in 8 of the 11 cities and identifies key operational characteristics contributing to project effectiveness.

Finally, Part III is based on the responses (statistical data pertain to 1968) to a 72-city questionnaire mailed to 280 individuals--judges, bail project directors (or public defenders regarding the 39 cities that did not have a bail project), prosecutors, and defense attorneys. The questionnaire served to both augment and reinforce the information developed by the 11-city survey cited in Parts I and II.

These pages will help sweep away the numerous myths and distortions contained in many descriptions of the bail system, will present the merits of various alternatives to this system, and will enable officials to compare their respective pretrial release procedures with those of other jurisdictions. Hopefully, this information will help stimulate and facilitate needed improvements.

PART I
THE TRADITIONAL SYSTEM

BASICS OF THE TRADITIONAL SYSTEM

The purpose of bail may be examined from two perspectives: statutory provisions and operational realities. Although the latter should closely conform to the former, this is not generally the case. One reason is that most statutes offer extremely vague guidelines in this area and thus permit the judiciary to exercise considerable discretion. Second, cases attacking the misuse of judicial power in setting bail are practically nonexistent and thus current practices (and abuses) are rarely challenged. Finally, the individuals suffering the most from the operation of the traditional bail system are from the lowest economic and social class and are least able to organize political pressure to reform the system.

A. Purposes of Bail--Law vs. Practice

With the exception of Washington, D.C., all municipalities included in the intensive 11-city survey* of pretrial release procedures were governed by very similar statutes pertaining to the purpose of bail. Typically, the statutes state that the objective of bail is twofold: to prevent punishment of the accused before conviction and to secure his attendance at trial. As far as recommending criteria for judges to use in attempting to predict the amount of bail sufficient to assure a defendant's timely appearance for trial, the states vary from providing no guidelines at all to having enacted highly detailed statutes. (However, where guidelines do exist, they are not necessarily the same ones employed in the courtroom.) Statutory guidelines tend to emphasize the community ties of the defendant (family ties, employment record,

*Atlanta, Baltimore, Chicago, Detroit, Indianapolis, Los Angeles, Oakland, Philadelphia, San Francisco, St. Louis, and Washington, D.C.

residential stability, and financial condition) and the seriousness of the offense charged.

Washington, D.C., is atypical because its legislation advises the courts that in determining the pretrial release of a defendant, they should be assured that he will neither fail to appear on his trial date nor endanger "the safety of any other person or the community." Although many judges, nationwide, have included among their bail-setting criteria an evaluation of whether the defendant might commit crimes during pretrial release, Washington's legislation, the District of Columbia Court Reform and Criminal Procedure Act of 1970, is the first endowing this practice with any degree of legitimacy. This legislation contains a provision authorizing preventive detention, a procedure intended to protect society from defendants judged likely to commit crimes during the pretrial period or threaten and harass witnesses and jurors.

Enlarging upon the language contained in statutes, most judges consider bail as fulfilling one or more of a variety of objectives in addition to the one of guaranteeing a defendant's future appearance in court. First, some judges view bail as a punitive measure and set bail at a high level in the belief that the defendant has committed the crime and deserves detention or at least temporary economic hardship. Second, others view bail as a means to implement preventive detention. Bail is set at an amount which is beyond the economic means of defendants in order to protect society from those who would, in the judge's view, commit crimes while free during the pretrial period.

Bail is often imposed for rehabilitative purposes, particularly in connection with youthful first offenders. By giving these inexperienced defendants a taste of the harshness of detention, some judges feel that the youths may be scared into keeping within the law upon release. Finally, with regard to misdemeanor cases, bail is also employed to force a speedier trial

and unclog the overlaid calendar. Soon after arrest, the defendant appears before the magistrate and is given an opportunity to have the case disposed of at that time or to request a continuance in order to obtain counsel. Seeking to discourage a request for delay, the judge warns that, in the event of a continuance, he will set bail, which the defendant may not be able to make. In the large majority of such instances, the defendant understood the implications, waived his right to an attorney, and agreed to permit the immediate disposition of his case.

B. Bail Procedures in Eleven Cities

The following thumbnail sketches of local bail procedures are based on information developed by the 11-city intensive survey conducted in 1970-71. The sequence below reflects the population ranking of each city, beginning with the least populated of the 11 municipalities.

1. Indianapolis. After arrest, all defendants are brought to the city's lockup. They may learn the amount of their bail from the lockup's turnkey, who has a bail schedule for all crimes. Defendants are permitted one phone call, usually made to a bondsman or relative and heard over a loudspeaker throughout the jail. On the day following apprehension, those arrested for felonies receive a preliminary hearing and persons charged with misdemeanors may request to have their cases adjudicated then and there or ask for a continuance.

In contrast to misdemeanor cases, judges do not possess significant discretion in setting bail for felonies, the amount being fixed by a fee schedule. Despite adequate state legislation, bondsmen are very poorly supervised and often avoid payments in connection with client forfeitures.

2. Atlanta. In relation to the other ten cities studied, Atlanta's judiciary and police officials can exercise considerable discretion in the

bail-setting process. The role of police is especially significant. For example, in felony cases the amount of bond is frequently determined by what the police officer recommends to the presiding judge at the preliminary hearings.

The district attorney is responsible for supervising bondsmen and for collecting forfeitures, on which there is a 25 percent discount whenever bondsmen can demonstrate they have honestly tried to locate their clients. After indictment of defendants, the district attorney may recommend lower or higher bail, a recommendation the judge almost always follows.

3. Oakland. The bail system operates fairly smoothly with no real problems or distinguishing features, except for the administrative and detention burden represented by the large number of transients in the area. They are regarded as poor risks both by judges and by bondsmen, which puts a great strain on already overcrowded detention facilities, located 40 miles from the courthouse.

4. San Francisco. Similar to Oakland, the city's bail system was characterized by most informants as being generally fair and effective. The ability of the system to release defendants quickly was one of its strongest assets. San Francisco's administration of bail and its reform project were the most effective and equitable in relation to those of other cities investigated.

Similarly, the city's regulation of bondsmen was far superior to that of any other city visited. The State Insurance Commissioner works closely with several judicial officers to supervise bondsmen. The records of each bonding company are carefully scrutinized and the abundance of forms required for each transaction allows city and state officials to hold a tight rein.

5. St. Louis. The administration of bail in this city appears to be

an unusually visible and political phenomenon. This has created a very cautious judiciary, unwilling to risk their prestige for any defendant's pre-trial freedom.

The political aspect of the city's bail system stems from the influence that bondsmen exert on lawmakers. The strength of bonding companies is also indicated by the small percentage of bond forfeitures which result in a payment to the court (in 1970, of 318 felony cases forfeited, the court required bondsmen to pay the complete bond in only 14).

6. Washington, D.C. The most distinctive aspect of the District's bail operation was the extensive use of nonfinancial conditions (pertaining to travel, curfews, employment, etc.) placed upon the defendant during his pre-trial release. Judges imposed such conditions in 48 percent of the cases in 1969. But, due to severe staff limitations, violations of pretrial conditions were either not detected or, if they were, they were not usually enforced. This is just one manifestation of the administrative chaos hampering the District's bail system.

7. Baltimore. Municipal Court judges rely heavily upon a fixed bail schedule for both felonies and misdemeanors. The city's Supreme Bench frequently reduces bail amounts but not until defendants have spent three to six weeks in jail.

8. Detroit. Visiting judges from jurisdictions outside the city are involved in the administration of bail in Detroit and have been accused of insensitivity by the black community.

In the bail-setting proceedings, a detective sergeant, who served as arraignment officer, was the most influential court officer in determining the size of the defendant's bond.

9. Philadelphia. The district attorney's office controls the adminis-

tration of bail. For defendants charged with any of a number of serious crimes, the judge cannot permit bail without the consent of the district attorney, whose recommendation regarding bail amount is the minimum the court may set.

10. Los Angeles. Although the district attorney's office takes an active part in the administration of bail, judges are free to exercise their discretion.

11. Chicago. The bail bonding industry has been eliminated throughout Illinois. Defendants pay 10 percent of the bail amount directly to the court and will recover 90 percent of this payment if they appear for their court date. In 1969, over 100,000 defendants obtained their release in this manner. On paper this procedure seems nearly perfect, but, as one studies the system's daily operation, many discrepancies and inadequacies become all too evident.

THE ADMINISTRATION OF BAIL: THE PROCEDURES

Before describing bail procedures, which will be discussed in the sequence that the accused would experience them, a brief overview of the traditional methods by which defendants may obtain pretrial release is in order.

The most frequently used procedure for obtaining one's pretrial release is through cash bail. Having learned of the bail figure, a defendant may raise the full amount of the bond through personal savings or those of his friends and family. If he shows up for all required court appearances, the entire amount is usually refunded to him.

However, the defendant may require the assistance of a bail bondsman, who has complete discretion in selecting clients. The bondsman's usual fee is 10 percent of bond amount, a payment not recoverable by the defendant. The bondsman will place the full amount of the bond with the court and the defendant gains pretrial freedom.

Results of the questionnaire mailed to 72 cities indicate that 65 percent of all defendants arrested for misdemeanors and felonies were able to obtain their release on cash bonds, also referred to as surety bonds. Of this total, 44 percent utilized a bondsman and 21 percent raised the required amounts themselves. There is great variation among cities regarding the amount of bond associated with any given crime.

A second method by which pretrial release may be obtained is the 10 percent plan, whereby the defendant pays 10 percent of the bond directly to the court and recovers 90 percent of this deposit if he appears in court as scheduled. During 1969, 36 percent of those gaining pretrial release in Chicago used the 10 percent plan, whereas only 4.5 percent did so in Washington, D.C.

In 75 percent of the cities studied, the court permitted defendants released on property bonds, whereby the defendant or others offer property as bail in lieu of cash. Only two of the cities studied (Atlanta and St. Louis) use this method with any regularity. Interviews in both cities, however, revealed two basic problems.

First, in St. Louis, the author was told that forfeiture on property bonds created a moral dilemma for the criminal court clerk's office. The difficulty is caused by naive but good-hearted citizens who are willing to sign a property bond so that the defendant can secure his pretrial release. Usually being respectable citizens unfamiliar with the operation of the criminal courts, they have not investigated the implications if the defendant forfeits the bond, which would permit the city to claim their property at any time. The net result is that these claims are not pressed by the clerk's office.

Most prevalent in Atlanta, the second problem associated with property bonds was that businessmen who owned real estate throughout the city would use the same piece of property for several bonds. Charging defendants half of what they would have to pay bondsmen, the businessmen were shrewd enough to realize that because of the enforcement dilemma indicated above, they ran little risk of losing their property even if the defendant did forfeit and skip town.

In most cities where the judge is allowed a good deal of discretion in setting bonds, he may replace or supplement the surety bond by imposing such conditions of release as requiring the defendant to return to work or school, to avoid certain individuals or areas of the city, or to subject himself to tests for drug addiction.

Personal bond is another method of release, which may be referred to as

personal surety, nominal bond, or release on own recognizance. It is used when a judge determines that the defendant is sufficiently motivated to show up for his scheduled court appearance and can be released on his own signature without bail.

A. From Arrest to First Judicial Appearance

The administration of bail and pretrial release commences when the defendant is arrested. In nearly all cities studied, a local court has ruled that, once booked, a defendant must appear before a magistrate within 24 hours or "without unnecessary delay." However, in a very small percentage of cases, police circumvent this ruling by delaying booking in order to gain time to conduct a thorough interrogation. This permits detention of a suspect for up to a day without allowing him an opportunity to obtain pretrial release, for bail cannot be set until the defendant has been told the specific crimes of which he is accused.

More typically, upon arrest the defendant is taken to the nearest station house and within 24 hours moved to police headquarters for detention in the city jail. Station house personnel occupy a key position in the administration of bail, for they usually have the responsibility of informing the defendant what his bail will be (as determined from a fixed bail schedule) and how to communicate with family, friends, or chosen bondsman in order to raise the required bond. In cases involving serious crimes, the bail decision is usually made by a judge.

If charged with a misdemeanor, most defendants are able to obtain their release from the station house or other initial detention facility within three hours in all 11 cities studied. When accused of a felony, a defendant has a much more difficult time in securing his release, for only three of the eleven cities permit police to release defendants at the station house fol-

lowing arrest. Commonly, such defendants are transferred to a central detention facility to await an appearance before a judge. The main factor influencing the duration of this waiting period is the time of day at which the arrest is made. If the arrest occurs after courts close, usually at 4 p.m., the accused will be confined until he can see a judge the following morning. About 75 percent of arrests occur after 4 p.m. If arrested on a Friday night, those accused of felonies may have to wait until Monday morning for a bail hearing.

Defendants released on personal or surety bond by a nonjudicial officer, such as a police desk sergeant, have obtained freedom only until their first court appearance, which usually occurs the following day. At that time, unless the case is disposed of then and there, the judge reviews the bail amount and may revise it upward or downward. Similarly, bail set by a lower court for those accused of felonies may be reviewed and revised by the higher court which conducts the actual trial.

Although the most important factor affecting the treatment of the accused during the initial stages of bail administration is the seriousness of the charge against him, there is little or no relationship, as discussed later, between the seriousness of the crime and the likelihood that the defendant will present himself for his next scheduled court appearance.

B. The Judicial Bail-Setting Decision

The criterion to which nearly all felony court judges assign the greatest significance when reaching decisions on bail amounts is the seriousness of the offense, despite evidence indicating that this intention is unrelated to the primary purpose of bail--to guarantee that the defendant will appear for trial. The author believes that this criterion is used most frequently because it is so clear-cut and easy to apply. Thus the process of setting

bail becomes a very rapid and smoothly operating procedure, a desirable objective in view of the tremendous workloads facing many courts.

However, this criterion does not result in a uniform bail-setting policy because each judge has his own conception of the seriousness of various offenses.

Used in close conjunction with the judge's conception of the seriousness of the offense, a second yardstick employed in the bail-setting decision is the strength of the case against the defendant. This information is often relayed to the bench by prosecutors and police officers.

A third factor considered very relevant by the judiciary is the defendant's prior criminal record.

The three criteria above are felt to be the most crucial factors in setting bail by nearly all judges interviewed. They are the only factors that judges examine with any degree of regularity.

Other criteria relate to the defendant's background, such as his community ties, financial status, and character references. One of the most ironic aspects of the bail-setting procedure is that the factor explored least frequently by the judge has the greatest impact on the defendant's ability to secure pretrial release--his financial status and the amount of bail he can afford to pay.

There are three explanations for this lack of judicial interest in the defendant's background. First, many judges are too harried and overworked to have an opportunity to question the defendant about his background. Second, some judges consider such inquiries as so much wasted time since defendants cannot be trusted to supply truthful answers. Finally, judges believe the first three criteria to be the most valid predictors of defendant behavior.

Judges do not reach bail-setting decisions in a vacuum. The five most

significant outside influences are the police, court officials, prosecutor's office, defense attorney, and newspapers.

The most important outside influence is that of the police, who can influence a judge's bail decision through (1) selection of the charge with which to accuse the defendant, (2) specific recommendations made at the bail hearing, (3) the provision of "rap sheets" to the judge, and (4) an indication of the strength of the case against the accused.

Prosecutors may alter the charge, notify the judge about the strength of the case, and make recommendations at the bail hearing.

Also influential are the various court officials who play such an essential role in running the daily operation of criminal courts. Judges tend to rely on these people and will use them as a source of information on several matters related to bail administration.

If the defendant's counsel is present at the bail hearing, he tries to supply facts in attempt to secure his client's release on the best conditions possible.

Finally, pressures exerted on the judiciary by the press and general public influence the bail-setting decision. Fearful of adverse publicity resulting from releasing a defendant who might commit a crime while awaiting trial, one judge indicated that he and his associates were constantly looking over their shoulders at the press and general public when deliberating the amount of the defendant's bond.

If the defendant secures his pretrial release, the court has the responsibility of notifying him of the date of his next appearance. This is done either by the judge orally or by the clerk of the court in oral and/or written form. Considering the chaos of the courtroom, this is a grossly ineffective procedure and, in the author's opinion as well as that of the majority of

interviewed judges, is responsible for more forfeitures than are deliberate attempts by defendants to avoid prosecution. Very few cities even attempt to follow up this initial notification with a reminder at a time closer to trial.

C. Initial Bail Hearing to Trial

After the initial decision to grant bail, the defendant may be affected by numerous reviews and revisions of the decision up until his final appearance in court. For example, when a person accused of a felony is bound over by a lower court, where he was arraigned and bond set, to a Superior or Circuit Court, which will conduct the trial, the latter may increase the amount of bail. If so, the defendant must resort again to family, friends, or bondsmen to raise the required sum. He is now being held under an entirely new bond by a different court, his initial bond serving only for the period from arrest to being bound over to the higher court.

This system of raising a defendant's bond is called double bonding or multiple bonding and was found in those cities where bondsmen appeared to possess relatively strong political clout. In approximately half the cities studied, the courts have eliminated double bonding. Of the remainder, only Atlanta seems to use the device with any degree of regularity.

A much more common occurrence, however, is for the defendant's bail to be reduced rather than raised. Motions for bail reductions usually originate with defendant's counsel. Two of the 11 cities surveyed operate bail reform projects which have formal bail reduction programs. Although statistics were unavailable in the 11 cities, an educated guess is that motions for bail reduction are made infrequently and have a one-in-three chance of success.

An important element affecting the administration of bail is the length of time a defendant must wait between arrest and trial. Ranging from two to six months for felony cases in the 11 cities, this period of delay is commonly

cited by judicial reformers as being the root cause of most problems plaguing the urban criminal justice system. For those denied bail or unable to raise it, and thus confined to a pretrial detention facility, this delay prolongs an already unpleasant mental and physical experience and tends to coerce pleas of guilty, even when the court gives precedence to hearing cases of those in pretrial detention.

Defendants who obtained pretrial release benefit by long delays before trial and frequently are contributors to increasing this delay by utilizing every possible legal ploy. Such defendants are so adept at outwitting a pitifully gummed-up calendar system that prosecution and witnesses are frustrated and cases dismissed.

Several states and cities have attempted to fight court delay by legislation requiring that a trial must be conducted within a specified number of days or else the case will be dismissed. Due to numerous loopholes and a lackadaisical attitude toward enforcement, these rules do not seem to be making much of a dent in this overbearing problem.

Long delays also exacerbate an already troublesome problem for bail administrators: the misconduct of released defendants either through their failure to appear for trial or through their commission of crimes during the pretrial period.

The forfeiture rate reflects failure to appear for trial and ranged from 3.7 percent in Washington to 24 percent in Detroit. In some instances, more than 50 percent of all forfeitures are technical or unintentional rather than willful. A principal cause of unintentional forfeitures is the extremely poor notification system used by courts to inform defendants of their court date. Also, as many judges indicated, bondsmen are not doing their job in many localities; they are failing to keep close enough contact with clients

to guarantee their appearance. Indeed, frequently there is little incentive for them to do so inasmuch as state and city officials often do not demand payment from them for these forfeitures or require only a small percentage of the total due if bondsmen demonstrate a good-faith attempt to apprehend their clients. In St. Louis, 90 percent of the forfeitures for 1970 were vacated.

Of course, a more serious form of misconduct occurs when defendants commit crimes during their period of pretrial release. Because of the confused state of statistics, only an educated guess is possible for the percentage of defendants committing such crimes. For the 11 cities, the figure probably ranges from 5 to 15 percent.

D. Conviction through Appeal

For those defendants found guilty and choosing to appeal the decision, the issue of bail pending appeal presents itself. In some cities this decision is at the sole discretion of the judge; in others, various rules of thumb are followed, such as doubling the amount of the original bond.

Indications are that most defendants requesting bail at this stage are not successful.

Despite the apparent dominance by judge or magistrate, the administration of bail is vitally affected by various nonjudicial groups, the most important being police, prosecuting attorneys, defense attorneys, and bondsmen. Except for what has already been indicated earlier, their roles and interrelationships are explored below.

Collusion between bondsmen and police, with the latter receiving monthly kickbacks from the former, is a practice that has sharply declined in recent years. It now occurs only sporadically because of increased supervision of bonding companies by state and city agencies and because the economic pinch has weeded out many bondsmen, resulting in less competition and elimination of the necessity for kickbacks.

When a defendant fails to appear in court, a bench warrant is issued for his arrest. In the majority of cities studied, the police department is called upon by the court. Unless the forfeiture is unintentional, the police are rarely successful in apprehending bail jumpers.

A current trend in most cities is for assistant district attorneys to be present at initial bail hearings. They tend to replace the police department in supplying the court with information about defendants and the strength of the case against them. Prosecutors generally supplant the department's traditional pretrial influence and help screen out bad arrests and overcharging.

In relation to the other nonjudicial actors, the defense attorney is the least influential in the operation of the bail system. One of the main limitations on the defense attorney's ability is that he enters a case after initial bail has been set and misses a very crucial stage. Of the 11 cities studied, a lawyer was present at the majority of initial bail hearings in three cities

and, in the rest, present for 25 percent of the cases. Based on observations of 345 cases in Detroit, the conclusion is reached that a defendant with lawyer has twice the chance of being released on personal bond; if a monetary bond is set, he is much more likely to have a lower bond when his lawyer is present. These findings are probably representative where private counsel is utilized, in contrast to a public defender who serves as defendant's counsel at the bail hearing only and thus has little opportunity to obtain information about his client.

However, defense counsel--private or public--appears to be most important when appealing the original bond and requesting a reduction or recognizance release, a procedure initiated about one week after arrest.

As for bondsmen, they no longer fit the stereotyped image of heavy set, cigar-chomping individuals with underworld links. But neither are they easily confused with corporation executives. Interviewed bondsmen generally agreed that business was down. Blame was placed on bail reform projects and an increasing number of forfeitures. Several businesses are on the verge of collapse.

One of the most significant trends is closer state and local regulation of the bonding industry. Entrance requirements, audits of records, and restrictions on when and where bondsmen are allowed in the courthouse are among the regulations in effect, but all too often not enforced.

Listed in order of their importance, there are five major sources of clients for bondsmen: the family and friends of defendants, defendants themselves, lawyers of defendants, court officials, and professional criminals.

In determining whether to accept a potential client, bondsmen consider the defendant's community ties, past criminal records, the strength of the case against the accused, and the extent to which the defendant's family will

help him appear in court on the designated date. The bondsman believes the most important factor affecting chances for pretrial release is the type of crime--not necessarily the seriousness of the offense--for which the defendant was arrested. Professional criminals and organized gamblers are considered good risks. First offenders, however, are not ideal clients; they are regarded as prone to panic and run away as their trial date approaches. Also poor risks are those committing recidivist types of crimes, such as drug addiction. If anything, the bondsman can be criticized for turning down too many defendants.

The customary fee is 10 percent of the total bond. As extra insurance, bondsmen often secure liens on the defendant's property, although this is outlawed (but seldom enforced) in several states. The 10 percent fee is gross profit, from which must be deducted losses from forfeitures, licensing fees, and general expenses.

Although several of the interviewed bondsmen worked long and hard at maintaining adequate contact with their clients, the majority seemed lax and merely assumed that the defendant would appear for trial. For those willfully failing to appear, the bondsman must rely on a system of informants and "skip tracers" to locate them. Often armed, skip tracers are modern day bounty hunters, who very frequently have criminal records.

The legal authority allowing the bondsman to return his client from any jurisdiction in the country is the bail piece, which is obtained from the court after the client has fled and attests to a bail relationship between defendant and bondsman. This, along with the bench warrant, is presented to local police wherever the fugitive is captured. More often than not the effort to recapture is unsuccessful.

Though hardly the sinister characters so often depicted, some bondsmen occasionally engage in illegal activities and other varieties of misbehavior.

PRETRIAL DETENTION FACILITIES

Approximately 20 percent of all defendants charged with felonies or the more serious misdemeanors are unable to secure their pretrial release and are confined. After arrest and before his initial appearance before a judge, the accused is detained at a station house and/or a lockup at police headquarters. Lockups are usually divided into three or four large cells, each of which may house 40 to 50 defendants. The toilet facility is often a hole in the floor. The absence of supervision, indiscriminant mixing of offenders, and the large cells posed a constant threat to the safety of the inmates. Nonetheless, the most frequently heard complaint was about the need for increasing the number of phones so that defendants could more easily make their allotted one or two calls.

After their initial appearance before a judge, defendants unable to obtain pretrial release are confined to the city or county jail. Overcrowding was evident in the jails of the 11 cities studied. A jail designed for 800 holds 2,000; another holds 845, of whom 464 are awaiting trial (114 being there for over three months); still another contains 766, of whom 190 must sleep on the floor. Inadequate ventilation, poor lighting, fetid aromas, noise, sickening food, dirty blankets, leaky roofs, and lax security characterize many jails.

A side effect of overcrowded conditions is that officials are unable to classify and segregate the prisoners according to age, seriousness of crime, or any other criteria. Thus first offenders are mixed with hardened criminals, 18 year-olds with 60 year-olds, felons with misdemeanants, etc. Even though 10 of the 11 cities made an effort to try detained defendants first, they usually had to wait two or three months for their trial.

As the author toured detention facilities, he found defendants spending

their time sleeping, playing cards, watching television, or engaged in conversation. The problems caused by the emptiness of this pretrial existence are exacerbated by the inability of defendants to obtain help in solving their personal problems, which have generally deteriorated.

A major impact of pretrial release is its adverse effect on the defendant's ability to prepare his case. Numerous studies clearly show that detained defendants are far more likely to be found guilty and receive more severe sentences than those released prior to trial. Limited visiting hours, locations remote from counsel's office, inadequate conference facilities, and censored mail all serve to impede an effective lawyer-client relationship.

A universal criticism leveled at the custodial force--the guards--is that there are not enough to provide adequate supervision. Also criticized is their tendency to abuse and mistreat prisoners. This, combined with overcrowded conditions and the absence of prisoner classification, jeopardizes the health and safety of inmates. Even when aware of violent activity, guards often do not become involved--perhaps due to fear, apathy, or bribery. True leadership and control of the cell block is, therefore, relegated to inmate bosses who dominate their area through guile and intimidation. Two of the most frequent crimes committed in detention facilities are homosexual attacks and thievery.

Generally, the medical and psychiatric services in all detention centers were despicable. The typical jail will have one or two nurses on full-time duty. Doctors--sometimes appointed through political patronage--are privately contracted; in one observed instance, the physician completed his rounds in 30 minutes. The best hope for an inmate is either very good health or else very good timing to catch the doctor on one of his fleeting visits. Horror stories about serious illnesses which were either mistreated or untreated are legendary. Drug addiction is the biggest medical problem facing detention facilities.

POLICY IMPLICATIONS

After examining how 11 cities administer their respective pretrial release systems, one faces two questions. First, is there a variation in the operation of bail systems; second, if so, what accounts for these variations?

Obvious from the foregoing is that procedures and styles of each city's bail system do vary. Despite these institutional and operational differences, however, the ultimate results in terms of forfeiture rates, rate of those committing crimes before trial, percentage of defendants detained in jail, etc. do not vary significantly among the traditional bail programs studied. For example, both Indianapolis and Washington report that 11 percent of released defendants commit crimes prior to trial, yet their bail systems utilize completely different methods of release and are staffed by judges of almost opposite attitudes.

Three factors help explain the differences in the overall operation of the cities' bail systems: political responsiveness of the judiciary, community activism, and attitude of the mass media. Regarding political responsiveness, each judge in Chicago, for example, understands his ultimate allegiances and the party's desires. The pretrial release system is, therefore, closely geared to the desires of the mayor and his representative on the court. This study found the Chicago bail system one of the most resistant to viable reform. The city tolerated a malfunctioning bail system which was herding defendants through their initial bail hearing at a rate of one defendant every 57 seconds.

At the other extreme is Washington, D.C., where judges are appointive and are unconcerned with re-election or responding to political demands. With this political freedom, the judiciary operates one of the most effective and humane pretrial systems and has been a leader in experimenting with a variety

of reforms.

Community activism also affects a city's bail operation in that those localities where community organizations pressured government for reform seem to be improving the quality of the release system. But where there are apathetic community groups, the bail system exhibits only rare instances of improvement or reform.

Mass media, particularly the newspapers, are another significant influence on the bail system. In one category are papers publicizing any instance of a defendant misbehaving while awaiting trial. This publicity can result in a judiciary which adopts a very cautious position on pretrial release. Other papers, however, are reform-oriented and have done a good job in educating the public. For example, the Indianapolis Star exposed a scandal involving a criminal syndicate's control over the city bail bonding industry.

Turning from the differences in the overall operation of bail systems, we shall explore the reasons for, and policy implications of, variations in "outputs" of these systems, such as forfeiture rates and rate of crimes committed by defendants awaiting trial. Also analyzed are double-bonding, bond reduction, court delay, bondsmen's conduct, and pretrial detention centers.

Forfeiture rates in most cities varied between 4 and 7 percent. Detroit, however, posted a 24 percent rate, largely due to prejudicial record-keeping designed to discredit the use of personal bond by showing a 40 percent forfeiture rate for defendants released on their own word.

In all cities, approximately half of all forfeitures are involuntary, resulting from honest confusion about when to appear in court. Involuntary forfeitures could be reduced, as noted earlier, by a better system of notifying defendants when to appear. Also helpful would be the development of a procedure, such as initiated by the Vera Institute in Manhattan, whereby defendants

are interviewed before the bail hearing about their community ties and other background information hearing on the likelihood of their appearance for trial. This data would be communicated to the judge, who often has neither the time nor inclination to obtain this information himself.

Finally, to reduce the adverse impact of involuntary forfeitures on court operations, a special bench-warrant squad assigned to the court could begin a search the minute a defendant fails to appear. Estimates indicate such a search would have a 50 percent success rate.

Regarding crimes committed by defendants awaiting trial, the two cities keeping these statistics indicate that 11 percent of such defendants commit offenses. The most publicized attempt to attack this problem is Washington's preventive detention provision, often described as poorly conceived and impossible to implement and utilized just seven times in its first seven months.

In the absence of necessary manpower to operate effectively a preventive detention system, two suggestions may prove helpful. First, since studies have shown that released defendants who commit crimes are most likely to do so after awaiting trial for over three months, a reduction in the delay between arrest and trial might prove effective. Second, defendants on pretrial release could be subjected to adequate supervision, either through their lawyers or a court agency. This could be coupled with preventive-detention type of qualifications by which to identify the relatively bad risks in order to impose on them more stringent conditions of release, such as more frequent reporting dates.

Double-bonding (see page 15) is an abuse that could be prevented by unifying the criminal court system and statutorily insuring that one bail amount would continue throughout the system. The practice is associated with cities where bondsmen possess political influence, where there is a most obvious distinction between the municipal or magistrate court where bail is first set and

the criminal court where the cases are actually tried, and where defendants' lawyers are unable to be present when double-bonding is imposed.

The most difficult problem in obtaining a bond reduction is to convince one judge to overrule another or to modify a bail schedule. A key factor is whether the defendant's attorney enters a motion for a reduction as quickly as possible. However, if the accused is unable to post the original bail, he is unlikely to have the money to hire private counsel. The crucial element, therefore, is the size, quality, and speed of involvement of the public defender's office or assigned counsel program.

Regarding court delay, all cities experienced this trouble, although municipalities in the East had the greatest problem. Neither crime rate nor size of city was found to bear a relationship to length of delay. Legislation requiring speedy trials has many loopholes, which are frequently exploited.

Misbehavior by bondsmen seems to be a national problem, with only California, Florida, and Illinois experiencing any degree of regulatory success. There seems to be a strong relationship between the proclivity of bondsmen to misbehave without repercussion and the amount of political influence they wield in a given city. The significant influence over bondsmen's behavior is the presence of a system of viable state control over the bonding industry. Most states have enacted the necessary statutes; what is required is their implementation in a conscientious manner.

Attempts at reforming pretrial detention facilities have been motivated by media publicity of deplorable conditions. Three most basic reforms, which seem both feasible and imperative, are the development of recreational programs so that the detentioner can leave his cell at least two or three hours per day, the initiation of rehabilitative programs, and the addition of more and better qualified personnel to the custodial staff to better protect inmates.

PART II

BAIL REFORM

INTRODUCTION TO BAIL REFORM

Bail reform projects systematically investigate defendants to determine their reliability for release on their own recognizance by analyzing such factors as their community ties, past criminal record, and the seriousness of the crimes of which they are accused. These projects are responsible for supervising defendants released on recognizance by judges who followed the bail project's recommendation. The project is also responsible for notifying the defendant of his next court date and for assuring his appearance. Some projects may also provide defendants with vocational counseling and job placement.

Conclusions reached in 1927 by a classic study of bail indicate the basic reasons why over 100 bail reform projects finally emerged during the 1960's: "The present system . . . neither guarantees security to society nor safeguards the rights of the accused. It is lax with whom it should be stringent and stringent with whom it should be less severe."

A principal purpose of the bail reform movement is to obtain the release of defendants who are good risks to show up for trial but are confined only because they lack funds to meet bail requirements. The necessity for releasing these defendants is the tremendous human and public cost associated with pre-trial detention: deplorable living conditions, economic hardships faced by the defendant and his family, difficulties for the accused in preparing their cases, and the expense of operating detention facilities (estimated at \$3 to \$5 per inmate per day).

Another purpose of bail reform projects is to eliminate or reduce the influence of bondsmen in the administration of urban justice. The bail bonding industry has been charged with corruption, criminal infiltration, and relega-

tion of judges and court officials to the relatively unimportant chore of fixing the amount of bail for defendants, with whom bondsmen may or may not decide to deal.

In addition, bail reform projects have argued against the traditional system of money bail on broader philosophical and constitutional grounds. First, pretrial detention punishes the poor man without a trial and prejudices the fact-finding, guilt-determining, and sentencing processes. That these hardships should befall an accused simply because he is unable to raise the required bail is regarded by most advocates of bail reform as economic discrimination of the most blatant kind and in violation of the Constitution's due process guarantee.

Also claimed is that common sense is defied by the money bail system because it allows imprisonment of those defendants who could not flee in the first place because of lack of funds or friends, while freeing defendants who have the financial ability to leave town.

An initial issue facing a bail reform project is whether to serve economically deprived defendants only or to open its doors to anyone who qualifies regardless of financial condition. Advocates of the latter justify their position by pointing to the need to eliminate bondsmen from the criminal court process. However, the assumption is advanced that the economic class of defendants reached by bail projects is not determined by policy but results primarily from the time lag between the arrest of the accused and the appearance of project personnel to interview, verify, and recommend.

For example, eight of the eleven cities investigated had bail projects, whose personnel interviewed defendants 4.5 to 60 hours after arrest. The longer this delay, the more likely that those with financial means to do so will have posted bail in order to escape the discomfort and humiliation of detention,

thereby leaving the less financially endowed defendant for the bail project.

In discussions with bail project directors, those defendants who could raise the necessary bail would not wait for more than a half day for project personnel to reach them, even though they might save several hundred dollars in bondsmen's fees by holding out a few more hours.

Another factor affecting the type of clientele served by a bail project is the use of a point system which emphasizes family and community ties as well as indicators of economic stability. Such standards severely limit the projects' ability to release indigents. On average, the eight bail projects give indigents only a one-in-four chance of release.

Another issue bail projects must confront is whether to help defendants accused of only the less serious crimes or to assist all the accused. In five of the bail projects studied, the sponsoring agency established a policy of not allowing the project to interview defendants accused of the more serious felonies. These five projects released from 3.6 to 7.2 percent of defendants, in contrast to the 31.4 and 21.5 percent figures for the two projects which could deal with all defendants regardless of their crimes.

Interestingly, the forfeiture rate for projects which could not interview defendants accused of serious felonies was 7.7 percent, in contrast to the 2.3 percent figure for the projects not restricted in this manner. The inevitable conclusion is that the seriousness of the crime is neither a valid nor reliable predictor of the defendant's future behavior, particularly his proclivity toward skipping town. One can also conclude that bail reform projects can enlarge the scope of their operation to include the more serious offenses without suffering a marked increase in forfeiture rate.

As explained in Chapter XV, the key determinant of the forfeiture rate is the adequacy of supervision, not seriousness of the crime.

Table 1 presents a statistical comparison (1969) of bail reform projects in eight cities. The roman numeral preceding each city in Column 1 indicates the effectiveness of the project there: I, highly effective; II, average effectiveness; III, low effectiveness; IV, misdemeanor project. The degree of effectiveness of a project depends on the extent to which it can release large numbers of defendants without suffering from a rise in the forfeiture rate and from an increase in the rate at which freed defendants commit crimes during their pretrial period.

Column 2, which indicates the number of defendants charged, refers to those accused who fall within the jurisdiction of the project. From this group, bail project personnel interview defendants, the number of whom is indicated in Column 3.

Column 4 indicates how many accused obtained own-recognizance pretrial freedom on the recommendation of the bail project. The release rate, in Column 5, is obtained by dividing the number of defendants released (Column 4) by the number of defendants charged (Column 2).

In Column 6, the percent of interviewees released is the result of dividing Column 4 by Column 3. Finally, the forfeiture rate indicates the percentage of released defendants who failed to appear in court at the appointed time.

Of interest is that the two projects releasing the greatest percentage of defendants (Washington and San Francisco) have significantly lower forfeiture rates than the two cities with the lowest release rates (Atlanta and Chicago). This throws doubt on the contention that by decreasing the percentage

Table 1
 Statistical Comparison of Bail Reform Projects (1969)

1 Category and City	2 No. Defs. Charged	3 No. Defs. Interviewed	4 No. Defs. Released	5 Release Rate	6 & Interview- ees Released	7 Forfeit- ure Rate
I Washing- ton	22,130	14,414	6,918	31.4%	48%	2.3%
I San Francisco	19,420*	15,600	2,027	21.5%	13%	2.3%
II Balti- more	13,400*	2,167	944	7.2%	43%	.7%
II Los Angeles	48,000	9,351	2,084	5.0%	22%	7.4%
III St. Louis	7,800	2,166	315	4.6%	14%	3.1%
III At- lanta	6,080	2,000*	250	4.1%	18%	8.3%
III Chi- cago	23,800	5,500	854	3.6%	15%	19.0%
IV Indian- apolis	14,041	4,645	2,695	14.4%	45%	2.9%

*Estimated figure.

of defendants recommended for release, a project can automatically reduce the forfeiture rate. A program of effective pretrial supervision of defendants appears to be a more important factor in establishing a low forfeiture rate. Chicago and Atlanta had the poorest systems of supervision.

The following brief highlights of the eight bail projects are presented in order of their effectiveness as listed in Table 1.

In Washington, D.C., the project has an investigative and supervisory staff of highly intelligent and motivated law students and graduate students.

They are full-time, going to school in the evenings. A unique feature of the project is the staff's role in supervising conditions of release (curfews, travel restrictions, etc.) that the judge may impose on defendants released on personal bonds. However, even if detected, these violations are not prosecuted.

The major strength of the San Francisco project appears to be the motivation, competence, and experience of its staff, comprised of four full-time personnel, twelve VISTA volunteers, six part-time student helpers, and two trainees from the Neighborhood Youth Corps. However, the project faces two principal problems. One is its shaky financial footing. The other is opposition by some police officers, who can create administrative difficulties and cause unnecessary delays in the project's gaining the release of a defendant, such as by limiting the time for interviews with inmates and by sitting on information about the defendants' background.

Baltimore's project is staffed by former probation officers, social workers, and former law enforcement officers. Because of an excellent system of pretrial supervision, the project has the lowest forfeiture rate of the cities in this study and probably for any project in the country. However, project personnel appear overly concerned with their public image and probably would sacrifice recommending more defendants for release in order to keep their forfeiture rate at its unrealistically low level of .7 percent. Many offenses are off-limits to the project. The project has gained public support and has achieved financial security.

The Los Angeles bail reform project is very similar to Baltimore's regarding funding, staff, and conservative nature. The weakest point of the program is pretrial supervision, although the forfeiture rate of 4.4 percent is not alarming.

When one compares the St. Louis project to Washington's, one realizes the tremendous disparities which may exist within the amorphous meaning of "bail reform project." Both cities have nearly equal populations and both suffer from a rising crime rate, yet the Washington staff of more than 30 is able to release more than 20 times as many defendants as St. Louis' four-man project. The most common explanation for its ineffectiveness is public distrust generated by local newspapers staunchly opposing the program. This has resulted in a very cautious judiciary. In addition, there are numerous procedural obstacles, such as the three- or four-day wait before defendants can be interviewed by project personnel. As a result, bondsmen have skimmed the cream of the crop by the time project interviews begin.

Atlanta's one-man operation releases approximately 30 defendants monthly. The project is also limited to the number of defendants it is allowed to handle; those accused of any of a long list of crimes do not have access to the project.

The Chicago project is meagerly staffed and only minimally effective with a very high forfeiture rate of 19 percent. With a small staff and many prisoners to interview, little wonder there is a complete absence of any supervision of the defendant once released.

The reason why the Indianapolis project specializes in misdemeanors only, in contrast to the other programs studied, is that this is seen as facilitating public and court approval. Such a strategy has proved itself, and the project is gradually expanding into the felony field. The bail project has offices in the lockup area of the city jail and defendants can be interviewed within hours after their arrest. Unique among all projects studied is the program's power to release defendants without seeking initial consent of judges. The latter usually see the accused one day after release and almost always approve the prior decision to grant pretrial freedom to defendants.

The project's excellent supervisory system results in the low forfeiture rate of 2.9 percent.

Some of the other cities studied have what might be termed quasi-projects, which are ineffective facades erected by court systems hoping to appear in the vanguard of judicial reform when in reality they are attempting to obstruct the formation of a viable bail reform project.

THE INSTITUTIONAL FRAMEWORK

The institutional framework of bail reform projects encompasses matters relating to investigative staffs, supervision, and funding.

A. Investigative Staffs

Staffs of bail reform projects ranged from 1 to 28, with 12 being the average. A large investigative staff does not necessarily result in high release rates and low forfeiture rates. However, insufficiently staffed projects are unable to release very many defendants.

Obviously, size of staff is crucial to the operation of a project when the agency supervising its work requests that all potential defendants be interviewed. Without sufficient staff, all energy is expended on interviewing and next to nothing on supervising defendants who are released. Also many defendants tire of waiting their turn for an interview and resort to bondsmen, as in Chicago.

The three most effective bail projects are staffed by law students, graduate students, or VISTA volunteers, who devote full-time to the project and attend school on a part-time basis. When law students are used on a part-time basis, they often lose interest in the project after a burst of initial enthusiasm and tend to place their studies above their responsibilities to the project.

Projects with noncourt staff investigators are releasing more defendants than programs utilizing court personnel and are able to maintain low forfeiture rates. Court personnel tend to be overly cautious in deciding who is eligible for release, perhaps because they feel that the easiest way to rock the boat--and to lose their job--is to release defendants who fail to appear or commit crimes before trial. Students and volunteers, however, are characterized by

dedication and enthusiasm and performed with missionary-like zeal.

B. Supervision and Direction of Bail Projects

Most bail projects are administered by a two-level form of supervision. Immediately above the investigative staff is a director, who is in charge of the daily operation of the project and resolves all nonpolicy-making questions. Above this director is the supervisor of the project, who approves the general policies; in most projects, this person is the chief judge of the city's superior court or the entire court.

The supervisors and directors possess great potential for either facilitating or inhibiting improvements in bail projects. The attitudes, beliefs, and personalities of these men, therefore, may be of crucial significance to the effectiveness of a bail project. Research seems to indicate that the more loosely the supervisors hold the reins on the day-to-day operations the more effective the project. However, unless the director constantly exerts pressure on the supervisor to improve the project, the sponsoring agency (usually a court) is prone to let it slide and die.

C. Funding and Institutionalizing

Seven of the eight projects studied are institutionalized to the extent that they are supervised by the city or county court system and also have their appropriations controlled by these public institutions.

Where funding is public and local and part of the court's budget--rather than private or federal monies--the bail projects are guaranteed financial security but often operate in a very cautious and conservative manner, releasing a much lower percentage of defendants than their staff size and budget would seem to permit. Bail projects privately funded are generally more effective than the publicly financed programs but are also financially insecure and have either folded or been absorbed by the court system.

OPERATIONAL PROCEDURES

Various operational procedures employed by bail reform projects are explored below, including the highlights of those methods producing effective pretrial release programs.

A. Time Required to Reach the Defendant

The lag between the time when the defendant is arrested and when he is interviewed is extremely important. Not only does this affect the number of defendants a bail project is able to release but also the quality of clientele the project may investigate. The longer the delay until a project reaches the defendant, the greater the chance that he will have made financial arrangements for release. Also bearing on this, of course, is the time consumed by project personnel in verifying the information obtained from the interview and in securing the defendant's release after the project informs the judge of its recommendation.

Defendants who are potentially excellent risks for the bail project because of family and community ties will rarely wait for the project to release them if it means more than a day's delay. Projects in Indianapolis, Washington, Baltimore, and San Francisco reach the accused in less than a day and are able to release many more defendants (average of 22 percent) than the other four cities, which require more than a day to make contact and release an average of 4.3 percent of defendants.

One reason for delay may be the distant location of bail projects from detention facilities. A second reason is the procedural requirements established by the supervising agency, such as not permitting defendants to receive the project's own-recognizance applications until arraignment, which occurs 48 hours after arrest. In one city, project interviews are not permitted until

The choice is not between a publicly or a privately funded project. A city has the responsibility to absorb the bail project and finance it once it has proven to be an effective program. While providing financial security, the city should be careful to allow the bail reform project sufficient independence in its daily operation, recruitment policies, and other policy decisions. Amply clear from the projects studied is that as the courts attempt to assume closer financial and policy-making control over the projects, the more conservative and less effective they become.

10 days after arrest. A third cause for the time lag is administrative delay by criminal justice agencies--a delay that might be intentionally prolonged if the bail project has angered any one of these agencies.

However, there are potential disadvantages of reaching defendants too rapidly: only the very well qualified defendants are released if an understaffed project cannot initially spend the time to evaluate the other defendants, many of whom are well qualified; bondsmen's ire is raised, which increases the likelihood that the project will run into political sabotage; many well qualified defendants interviewed quickly by project personnel change their mind and use a bondsman or pay the full cash bond, instead of waiting the additional three or four hours until the information is verified and the judge releases them on recognizance.

B. Criteria for Release

In determining whether a defendant should be recommended for release, all eight projects studied used the Vera Institute criteria: prior criminal record, family ties, employment, residential stability, and a small allowance for interviewer discretion. Of the eight projects, six gear these criteria to a point system (Washington, Baltimore, Atlanta, St. Louis, San Francisco, and Indianapolis). A defendant earns a certain number of points if he has a family, employment, etc. If he accumulates enough points, he is recommended for release. Advantages claimed for this approach include the following: biases of the interviewer are removed; the interviewer is able to determine quickly if a defendant should be recommended for release; the point system, not the staff, can be blamed for faulty recommendations; and more defendants are released by the point system (15.7 percent versus 4.3 percent for projects employing a subjective approach).

In contrast to the objective system, a subjective method involves ask-

ing the same questions but point totals are eschewed in favor of the interviewer's personal evaluation of the defendant's likelihood of appearing for trial. Proponents of this approach argue that they are better able to capitalize on the experience and knowledge of their investigative staff. They also note that even in the so-called objective approach, there is considerable discretion in the granting or denying of points.

A common criticism of the Vera Institute criteria, which are used in nearly all bail projects, is that the community ties standard reflects middle-class values and discriminates against minorities, indigents, transients, and youth--who are the very people who experience the most difficulty in securing their release under the traditional bail system. Most bail projects are aware of the discriminatory effects of the community-ties standard and have attempted to work around it.

Nonetheless, in relation to other operational procedures, the release criteria are not key factors in explaining bail project effectiveness.

C. Excluded Offenses

Many bail projects have reacted to the necessity for the protection of society by limiting their jurisdiction to crimes against property and other less serious criminal behavior. However, in cities where projects are not hampered by excluded offenses, the judge still has authority to deny release to any defendant who he believes would be a poor risk to appear on the appointed court date.

Of the eight projects studied, those with the greatest number of excluded offenses are the least effective--that is, they have the lowest release rates and the highest forfeiture percentages. In the three cities with the least number of excluded offenses, the average forfeiture rate of 3.9 percent is exactly half the rate for the four cities with the most excluded

offenses. Thus merely shrinking the jurisdiction of a project does not improve its predictive ability in selecting the most reliable defendants for release. Such findings offer empirical proof that the crime of which a defendant is accused is not a valid predictor of forfeitures.

Excluding categories of crime from the jurisdiction of the project has a great impact on its effectiveness. By so doing, the bail project is severely handicapping itself and is probably assuring its failure.

D. Verification

Verification is the process by which a bail reform project attempts to validate the information the defendant volunteered during the interview concerning community ties and prior record. This is an important process in the operation of a bail reform project because most judges refuse to release any defendant whose background information has not been verified. Because all projects studied employ the same verification procedure--phone calls to references--one cannot explain differences in effectiveness among projects on the basis of their verification procedures.

A major difficulty faced during the verification process is that references who do not have phones or those who work during the day (when most projects make their calls) or possibly hold two jobs and are also unavailable evenings will be almost impossible to contact expeditiously, which means the defendant remains in jail for an extended period. Obviously, the poor are the primary victims of this situation, which is exacerbated if more than one reference must be contacted.

Another serious aspect of verification by phone is the almost impossible task of asking questions so that truthful, unprompted replies result. Many staff investigators admitted that the phone call to the reference was often a meaningless operation. It is usually a pro forma confirmation of an earlier

judgment made by the investigator. A frequently mentioned reform would be to have the defendant sign a sworn statement that all the information he gave was the truth and any falsification would constitute criminal contempt of court.

E. Notification and Supervision

Notifying and supervising defendants during the pretrial period compose the most crucial operational element affecting a bail project's performance.

Notification is the process by which the accused is informed of his next court appearance. Though usually performed by the judge or court clerk, and technically not the responsibility of the bail project, most projects have supplemented the court's notification with additional means of telling their clients exactly when they are next to appear in court. This is achieved by a patient face-to-face explanation, a simply written statement devoid of legal jargon, or follow-up phone calls and letters.

In a further attempt to insure that as large a percentage of defendants as possible will appear on their court dates, most bail projects have utilized various techniques to supervise their releasees during the pretrial period. These techniques vary from a formal note to the defendant reminding him of his court date to elaborate procedures to remove him from a corrupting environment.

Research findings indicate that as a project increases its supervision over defendants, it is able to achieve a lower forfeiture rate. Degree of supervision affects forfeitures more than court delay and size of investigative staff, although the three bail projects having the lowest forfeiture rates also possessed three of the largest investigative staffs.

In four cities where adequate forfeiture statistics on bondsmen were available, all but one bail project were able to operate with a much lower forfeiture rate than did bondsmen. On average, the four bail projects had a 4.1 percent forfeiture rate, contrasted to 9.2 percent for bondsmen.

VARIATIONS AND ALTERNATIVES

Examined below are (1) additional explanations for operational variations among bail projects and (2) alternatives to the traditional money bail system other than the type explored on previous pages.

A. Determining Additional Influences on Bail Reform Projects

Bail projects not only are affected by their internal organization and operating procedures--such as discussed on preceding pages--but also are subject to external forces.

Because of the more progressive image often associated with western states, many people assume that projects there would be operating more effectively than those in the East. However, this is not necessarily the case; geographical location, therefore, is not a valid explanation for variations in effectiveness among bail projects.

Neither is the size of a city nor its racial or ethnic composition a significant indication of how effectively a bail project can be expected to operate. The same holds for such possible influences as median income, poverty population, and crime rate.

Although rejecting the setting of a bail project as a significant determinant of operational effectiveness, one should not minimize the influence of social and political pressures on the project's operation. For example, as the sponsor for nearly all the projects, the judiciary exerts a great influence through control of funding and staffing in many cases.

As indicated earlier in this report, the police, prosecutor, and press can significantly influence the effectiveness of a project. And community organizations can either perform a watchdog function by alerting the public to a poorly operated project or by providing an improved program to replace

or supplement one operating unsatisfactorily.

The influence of the general citizenry is difficult to measure, but there was a pervasive lack of citizen interest and concern over the issue of bail reform and pretrial release. Also the individuals controlling the processes which bail reform attempts to change are too well insulated from outside pressure.

Regarding political pressures, most politicians have chosen to neglect, or even worse, to denigrate the bail reform movement.

B. Alternative Reforms to Pretrial Release

In addition to the bail reform projects discussed on previous pages, there are other types of pretrial release programs. One group of alternatives are procedures used by police to release those accused of less serious crimes.

The citation program permits a police officer to issue a summons upon apprehending a suspect on the street, rather than taking him into custody. The procedure is identical to that used by police in ticketing traffic offenses. In one locality, a summons is issued in nearly all misdemeanor cases, such as petty theft, minor assault, and municipal ordinance cases. Despite the obvious savings in police time, these citation programs have not, as a rule, been very well received by police forces.

If the offender must be arrested and taken to a police station for booking, he still may be spared detention if he can obtain station house release, which is a second reform measure available to police. Typically, after arrest the defendant is brought to the station house where he is interviewed to determine if he possesses sufficient community ties to qualify as a good risk. If he does qualify, a recommendation is made to the precinct captain, who has discretionary authority to release or detain. If released, the accused is presented a summons notifying him of his court date.

Another reform program is directed at defendants after arrest but before formal charging. Called pretrial diversion, the program offers educational and employment opportunities to qualified participants, who are assigned to counselors acting as middlemen between the participants and local social welfare service organizations.

At the completion of the prescribed 90-day period, the counselor may recommend to the court dismissal of pending charges if the participant has progressed satisfactorily; extension of the diversion period; or reversion of the defendant to normal court processing.

Conditions of release is yet another bail reform approach, whereby the court increases the extent of pretrial supervision over the defendant by placing a series of restrictions on his behavior before trial.

Another procedure is to release the defendant into the custody of a willing private third party, who must be approved by the court. Those typically chosen as personal sureties are the defendant's attorney, minister, or school official. A variation to this approach is to release defendants to the supervision of an organization, rather than to that of an individual. This is often referred to as community release.

A final alternative is daytime release, whereby defendants are allowed to leave the jail during the day so they may continue their jobs or help prepare their case.

This chapter outlines a model program based on the results of the 11-city survey, comments on the factors influencing the initiation of bail projects, discusses the major effects of these projects, and evaluates the future of bail reform.

A. The Model Program

The project should be staffed primarily by students who are able to work full time during the day. Part-time workers who are full-time students have not proved satisfactory. The conservatism of former law enforcement officers makes them unlikely proponents of viable bail reform. The size of the staff, of course, should be sufficient both to complete prerelease investigations in a timely manner and to supervise defendants adequately during the pretrial period.

The staff should be supervised by an individual who is not directly under the thumb of the sponsoring agency. This project director should be a professional, trained in the problems commonly confronting the program's clients.

Ideally, the sponsoring agency (usually the court system) should provide the project with not only reliable and sufficient financial aid but also complete autonomy in all phases of its operation.

Speed in reaching a defendant after arrest is extremely important, although this should not be achieved at the expense of sacrificing reliable verification of the defendant's community ties and prior record. The controversy over objective versus subjective criteria is artificial and unimportant. But an objective system is preferred here simply because projects using this approach were more effective than projects employing subjective criteria.

A continuing debate surrounds the fairness of the community ties standard. Though certain defendants are discriminated against by such a standard, it seems to be the best alternative yet developed.

No crimes should be excluded from a bail project's jurisdiction. As long as the defendant's background and community ties are carefully investigated and he is adequately supervised during his pretrial release period, the seriousness of his crime is irrelevant to whether he will or will not appear on his court date.

Total reliance on a phone call for verification of defendant-supplied information has serious disadvantages. The few projects able to supplement phone calls with personal visits recommend the release of many more defendants.

Adequate pretrial supervision of defendants is crucial, as is a procedure that will notify them of their scheduled court appearance.

B. Influences Favoring Adoption of Bail Reform

A relatively apolitical court system is able to grant needed independence to bail projects, and even offer active support.

Second, community activism can be a positive influence for the adoption of bail reform, which very rarely bursts forth from the mind of an enlightened bureaucrat. And a project's continued success after its initiation is often the result of community agitation.

The attitude of mass media, particularly the newspapers, is an important influence. In one city, local television and radio stations went out of their way to help the local bail project get off to a good start.

C. Effects of Bail Reform Projects

Despite what might be assumed, the mere presence of a bail project does not guarantee that there will be an automatic increase in the number of defendants released on their own recognizance. The eight projects studied can be

seen as operating within three ranges of effectiveness: some projects have significantly increased the number of own-recognizance defendants; other have only a minimal effect; still others are mere token efforts undertaken for cosmetic reasons and have no effect at all.

Bail projects also attempt to improve the process by which defendant behavior can be predicted and controlled. This is achieved through selection criteria and pretrial supervision.

Another effect of bail projects is to save cities vast sums that would otherwise be spent on confining defendants and constructing new detention facilities.

Indirect effects of bail projects are that (1) citizens become convinced about the honorable and humane intentions of the courts, (2) they frequently serve as a catalyst for other reforms, and (3) they relieve some of the workload from overburdened judges. Other indirect results are that token projects can endanger future, worthwhile efforts; effective projects reduce the volume of business for the bail bonding industry and can exacerbate the often strained relations between the courts and police.

D. The Future of Bail Reform

Bail projects have started, folded, and then begun again--all within a period of a few years. One explanation for this is that the reform movement has not organized and received backing from a sufficiently large segment of the citizenry.

Second, the financial crises facing cities has prevented them from incorporating successful pilot projects into municipal operations, which often results in the financial impairment and even discontinuance of those projects.

Third, when cities did take over funding of pilot projects, the municipalities also wanted a predominant role in the operation of these projects--

often to the detriment of hitherto successful bail programs.

On the basis of the past, a bright future for bail reform is difficult to foresee. However, a few projects have expanded into the area of pretrial diversion, an approach representing the greatest advance and most forward-looking development in the brief history of the bail reform movement.

Until the attitudes of the judiciary, who control the majority of bail projects, and of the general public change, and until the economic plight of the cities has been relieved, there is little cause for optimism about bail reform. At best, the projects will probably continue to exist on a year-to-year basis.

PART III
THE NATIONAL MAILED SURVEY

ATTITUDES TOWARD PRETRIAL RELEASE

There were 156 respondents (56 percent), scattered among 72 cities, to the questionnaire mailed to judges, prosecutors, defense attorneys, and bail project directors (or public defenders in cities without projects). This chapter explores their attitudes, as revealed by the survey, toward the operation of pretrial release in the respondents' own communities.

A. The Role of Bail System Participants

As the last column in Table 2 indicates, 80 percent of all respondents agree that the judge is the most significant figure in determining the size of an individual's bond, which is in agreement with the author's findings in the 11-city intensive survey.

Turning to the prosecutors' evaluation of their role, we find 56 percent consider it as significant. Prosecuting attorneys from larger, poorer, western cities are most likely to believe they play an important part in the determination of bail.

Regarding prosecutors' attitudes toward reducing the power of bondsmen, the author tentatively concludes that prosecutors in cities which are operating effective bail programs, usually characterized by low forfeiture rates and large numbers of defendants being released on recognizance, realize that bondsmen are not really essential to ensure adequate pretrial release programs.

B. Interpretation of Current Bail Practices

Table 3 indicates attitudes toward various bail practices. Only 26 percent of those responding to the 72-city survey could affirmatively state their satisfaction with the money bail system presently in operation. Examining the attitude of the judiciary in greater detail, one finds that judges

Table 2

Role Evaluation by Bail Administrators

Questionnaire Statement	Those Agreeing with Questionnaire Statement					All Respondents
	Judges	Prosecutors	Public Defenders	Bail Proj. Dirs.	Def. Attys.	
Judge plays a most significant role.	82% (37)	78% (27)	100% (14)	61% (11)	76% (33)	80% (122)
Prosecuting attorney plays a significant role.	78% (35)	56% (20)	93% (13)	56% (10)	86% (37)	70% (115)
The bondsman plays a crucial role.	58% (26)	74% (26)	86% (12)	83% (14)	58% (25)	72% (103)
Power of the bondsmen should be reduced.	58% (26)	53% (17)	58% (8)	61% (11)	53% (23)	56% (85)

from poorer cities and from western cities having bail reform projects were the most likely to find the money bail system unacceptable (5 to 1 against).

In view of the frequent charge that increased release on recognizance is at least partly responsible for the rising crime rate, an encouraging sign is that a large percentage of respondents were unwilling to blame own-recognizance programs for climbing crime rates.

When looking at the responses pertaining to conditions in pretrial detention facilities, one is distressed that the most influential group in the administration of bail--the judiciary--is so cautious of complaining about overcrowded facilities. To put this in better perspective, 85 percent of the judges from the larger cities agreed that their pretrial detention facilities were inadequate, while only 41 percent of the judges from the smaller cities

Table 3

Interpretation of Current Bail Practices

Questionnaire Statement	Those Agreeing with Questionnaire Statement					All Respondents
	Judges	Prosecutors	Public Defenders	Bail Proj. Dirs.	Def. Attys.	
Approval of current money bail system	27% (12)	40% (13)	36% (5)	11% (2)	16% (12)	26% (44)
Bail should be set at more realistic levels	36% (16)	25% (8)	57% (8)	44% (8)	65% (28)	45% (68)
Increase use in recognizance release may lead to rise in crime rate	31% (14)	27% (12)	14% (6)	22% (4)	14% (6)	25% (42)
Presence of overcrowded detention facilities	51% (23)	63% (20)	64% (9)	55% (10)	72% (31)	61% (93)
Pretrial detention harms the defense preparation	29% (13)	12% (4)	36% (5)	50% (9)	47% (20)	35% (51)

reached that conclusion.

And the reluctance of public officials to acknowledge the impact of pretrial detention upon a defendant's ability to prepare his defense is very surprising.

C. Preventive Detention

Although only one city in the nation, Washington, D.C., has enacted preventive detention provisions, many court systems have been accused of operating informal preventive detention programs by simply setting the amount of

bail beyond the reach of defendants presumed dangerous.

Fifty-one percent of the respondents to the 72-city survey supported preventive detention as a crime-reducing device; 16 percent were undecided. Prosecutors (75 percent) are the staunchest believers in the use of preventive detention. At the opposite end of the spectrum are defense attorneys. Occupying the middle ground are public defenders and the judiciary.

Almost half the respondents agreed that an informal system of preventive detention was operative in their communities. Approximately 54 percent agreed that the practice of denying bail, setting it at an unattainable amount, or employing other similar methods should be used with increasing frequency. Prosecutors (81 percent) took the lead in advocating greater use of preventive detention, whereas public defenders and defense attorneys were at the other extreme.

D. Alternatives to Current Practices

As noted in Table 3 only 26 percent of respondents agreed that the traditional money bail system was a good procedure for determining pretrial release. So it is not surprising to find that 70 percent endorsed bail reform projects as worthwhile alternatives. However, an unusually large number (21 percent) were undecided on this matter. Judges constituted the professional group least willing to agree (58 percent) to the worth of bail projects.

As might be expected, only 55 percent of respondents from "traditional" cities agreed that bail programs were useful, in contrast to 76 percent from reform cities.

In suggesting newer and more radical types of alternatives, however, the author found a drastic decline in the percentage of respondents, particularly the judiciary, who were willing to support such reforms. Third-party

release, for example, was rebuked by nearly every group of respondents (only 35 percent agreed with the utility of third-party release, with 28 percent undecided). And daytime release is only slightly more acceptable (42 percent, with 25.6 percent undecided).

D. The Importance of Prompt Trials

The importance of a speedy trial to the effectiveness of a city's bail program has been a generally accepted belief. There are two major reasons for this. First, most feel that the defendant detained in jail should have his guilt or innocence determined as soon as possible. Second, by reducing pre-trial delay, one also reduces opportunities for the accused to commit additional crimes.

The national survey confirms this in that 72 percent of respondents agreed that prompt trials would significantly aid the administration of bail in their communities.

NATIONAL TRENDS: A DESCRIPTIVE ANALYSIS

The major purpose of this chapter is to present a statistical description of the administration of bail in the 72 cities surveyed and to determine what influence, if any, the following demographic factors exert on operational procedures: population, percentage of nonwhites, crime rate, median income, geographic region, and percentage of families earning less than \$3,000 yearly.

A. Organization and Procedures of Bail Administration

A fixed bail schedule states the exact amount (or range) of bail appropriate for a particular crime. Using the schedule as a guide, the judge does not have to ask questions, review prior records, or peruse the arrest report.

In 84 percent of the surveyed cities, a fixed bail schedule was utilized. The survey revealed that one was just as likely to find fixed bail schedules used in smaller cities as in the larger ones. Also, the release rate was unrelated to the absence or presence of a fixed schedule.

Regarding elapsed time from arrest to release, in 43 percent of the cities defendants were able to receive their pretrial release on the same day they were arrested if they could raise the required bail. In 40 percent of the cities, the defendant had to wait until the following day; in 17 percent, he waited from two to seven days. The average waiting period was between 24 and 36 hours. There was no correlation between the length of the waiting period and the selected demographic factors.

Respondents in each city were asked to evaluate the importance of several release criteria used to determine whether a defendant will be granted pretrial freedom. In 48 percent of the cities, the seriousness of the present charge against the defendant was thought to be the most reliable criterion predicting the defendant's pretrial behavior. In an additional 40 percent,

this criterion was considered only moderately important. Cities with the higher crime rates are most likely to emphasize the importance of the current charge.

Fifty-four percent of the cities regard the defendant's past record as extremely important, while another 32 percent found it moderately important. There was no relationship between demographic characteristics and cities emphasizing this criterion.

Only 33 percent of the cities considered as extremely important the defendant's past appearance record, although 74 percent rated it as important. The larger cities with above average nonwhite populations are the strongest supporters of this standard.

Regarding the presumed likelihood of defendants committing pretrial crimes, this release standard was considered as either moderately or extremely important by those in the majority of cities. There seems to be a weak relationship between cities whose citizens have above average income and those favoring the use of this criterion.

Criteria related to community ties of defendants were thought to be significantly less important than the release standards mentioned above. Only 9.6 percent of the cities believed that community ties were extremely important; 73 percent rated them as slightly or moderately important. The larger cities seem to favor use of this standard.

Despite authority to do so, most judges are hesitant to ask questions regarding a defendant's community ties. The most common reason offered is that there is not a verification method by which to validate the defendant's responses. The national survey indicates that in 59 percent of the cities, the local court system has instituted some type of verification process. There is not a relationship between the presence of a verification system and demo-

graphic characteristics.

The cities employ a wide range of notification procedures by which to inform the accused of his scheduled court date: personal letter (35 percent), oral statement (21 percent), telephone call (18 percent), formal notice to appear (11 percent), and personal visit (7 percent). The majority of cities (61 percent) notify the accused after he has left the courthouse, a procedure relied upon principally by cities with small nonwhite populations.

The 72-city survey identified 30 municipalities where supervision of defendants occurred during the pretrial period. All 30 operate bail reform projects and use them to supervise selected defendants during pretrial release. Larger cities have a slight proclivity toward operating supervisory programs.

Focusing on pretrial detention, the survey found that 53 percent of the cities do not possess separate detention facilities for pretrial defendants. A daily detention expense of between \$3 and \$6 per inmate was reported by 70 percent of the cities.

Almost 75 percent of respondents agree that a prompt trial is essential to the improvement of the American bail system. Twenty cities were unable to estimate the amount of time between arrest and trial. For the balance, the average delay was two months (trials of misdemeanants and felons are included). The largest group of cities (14) reported a two- to three-month delay. Large northern cities were most prone to have extreme delays, although a city's crime rate was not significantly related to the speed with which a defendant had been brought to trial.

B. Bail Reform Projects

Two-thirds of the cities in the survey which have populations over 200,000 are operating bail reform projects. The information below is derived

from a survey of 33 reform projects operating in cities of all sizes and geographic locations. Fifteen of these projects admitted that no real progress has been made since their inception; the remaining 20 expressed a more optimistic opinion. (Most projects were initiated after 1964.)

Only nine of the bail projects are sponsored by private agencies, such as foundations, bar associations, and legal aid societies. The two most common governmental sponsors are the courts and probation departments. The type of sponsor, whether private or public, had no bearing on the effectiveness of the city's bail operation.

Volunteers accounted for the staffs of 41 percent of the projects. The most common sources of volunteers were law students and VISTA personnel. (The larger the city, the more likely its project will be staffed by volunteers.) The majority of reform programs employed paid officers of the court, such as probation officers, court clerks and administrators, and judge-appointed bail investigators. These public servants were frequently criticized as performing their jobs in a lackluster manner.

Most bail projects (80 percent) had jurisdiction over felonies and serious misdemeanors.

C. Outputs of Bail Systems

Table 4 presents a statistical summary of the administration of bail in the 72 cities surveyed. The following paragraphs will only supplement, not repeat, the information in Table 4.

Of the respondents willing to estimate a five-year trend regarding the number of defendants interviewed for own-recognition release, 63 percent believed the practice was being used more intensively in recent years and the number of defendants recommended for release on own recognition increasing.

Defendants may be released on their own recognition through two prin-

Table 4
Statistical Summary of Bail Administration in 72 Cities

Categories	Number and Percentage of Cities in Each Category									
	% of Total Defendants	Inter-viewed for ROR*	Recc'd for ROR	ROR'd	Used Bonds-men	Detained	Rearrested		Forfeited	
							1. ROR'd	2. Money Bail	1. ROR'd	2. Money Bail
0 - 9%	55%(40)	3%(2)	10%(7)	34%(25)	6%(4)	36%(26)	79%(57)	66%(48)	87%(63)	80%(58)
10 - 19%	3%(2)	1%(1)	6%(4)	18%(13)	4%(3)	39%(28)	13%(9)	18%(13)	11%(8)	13%(9)
20 - 29%	10%(7)	3%(2)	6%(4)	13%(9)	7%(5)	14%(10)	6%(4)	6%(4)	1%(1)	4%(3)
30 - 39%	3%(2)	4%(3)	4%(3)	10%(7)	14%(10)	7%(5)	3%(2)	7%(5)	-	3%(2)
40 - 49%	4%(3)	4%(3)	4%(3)	11%(8)	26%(19)	1%(1)	-	3%(2)	-	-
50 - 59%	4%(3)	3%(2)	4%(3)	9%(6)	17%(12)	3%(2)	-	-	-	-
60 - 69%	4%(3)	3%(2)	1%(1)	1%(1)	7%(5)	-	-	-	-	-
70 - 79%	3%(2)	3%(2)	1%(1)	1%(1)	6%(4)	-	-	-	-	-
80 - 89%	3%(2)	3%(2)	1%(1)	1%(1)	10%(7)	-	-	-	-	-
90 - 99%	14%(14)	1%(1)	1%(1)	-	4%(3)	-	-	-	-	-
National Average for 72 Cities	28%	19%	21%	40%	16%	6.4%	8.2%	2.8%	3%	

*Release on Own Recognition

cipal means. The large majority were released because judges agreed with the recommendations of bail projects. However, judges also grant these releases through their own independent determination, which explains the otherwise confusing statistic in Table 4 that indicates a greater percentage of defendants were granted own-recognizance release than were recommended by the local bail project. This percentage has been seen as increasing over the years by those in 77 percent of the 72 cities. Cities with small black populations, low poverty levels, and a below average crime rate are most likely to release a larger percentage of defendants on their own recognizance.

Approximately 64 percent of all defendants from the 72 cities were able to obtain their pretrial release by raising the required bail, although 40 percent resorted to bondsmen. About 42 percent of respondents believed bondsmen had experienced a decline in business over the last five years, whereas 41 percent saw no change.

The 16-percent figure noted in Table 4 for the number of defendants detained includes those accused of both misdemeanors and felonies. Respondents in only a relatively few cities believed there had been an increase in the percentage of detained defendants during the previous five years. Seventy-five percent of cities with populations over 200,000 have a detention rate above the national average of 16 percent.

The 72-city survey estimated that 7 percent of defendants awaiting trial were rearrested, a low figure in relation to that of other studies--perhaps because of the inclusion of many relatively small cities in the sample. About half the cities have experienced a climb in the rearrest rate. City size is significantly related to the rearrest rate; the larger cities have severe court congestion problems, which give defendants additional time in which to commit crimes. Likewise, in most cities forfeiture rates have increased.

NATIONAL TRENDS: FOUR MAJOR ISSUES

The four major issues examined here pertain to reducing the forfeiture rate, decreasing the percentage of released defendants committing crimes during the pretrial period, maximizing the effectiveness of bail programs, and determining the impact of bail reform projects.

A. The Forfeiture Rate: How Can It Be Reduced?

When comparing forfeiture rates and operating procedures for pretrial release, one finds nearly 70 percent of the cities operating a supervisory system are experiencing a below average forfeiture rate, while 65 percent of those cities plagued by an above average forfeiture rate have failed to install such a system.

A second procedure related to the forfeiture rate is the place where the defendant is notified of his next court appearance. Nearly 80 percent of the cities notifying defendants at the courthouse rather than at a later date (usually by mail) were able to maintain a below average forfeiture rate. Only 23 percent of those cities notifying defendants after bail hearings possessed a below average forfeiture rate.

Regarding the influence of release criteria on forfeiture rates, the traditional criteria of present charge and past criminal record were of little utility in foretelling the defendant's pretrial behavior. Rather community ties and past appearance record are the most reliable pretrial release criteria for predicting a defendant's appearance in court. In 67 percent of the cities where community ties were considered extremely important, and in 64 percent of those municipalities where past appearance record was stressed, the forfeiture rates were below average. In contrast, above average forfeiture rates were experienced (1) by 70 percent of those cities where

seriousness of the charge was thought to be an extremely important release criterion and (2) by 63 percent of the cities where past criminal record was emphasized. None of the demographic factors described at the beginning of the previous chapter significantly influenced any city's forfeiture rate.

Although below average forfeiture rates have been associated, or correlated, with such factors as the existence of supervisory procedures, this does not necessarily mean a cause-and-effect relationship exists. For example, four-lane highways are associated with high speed traffic but certainly do not cause cars to travel fast. However, a method, called regression analysis, does exist by which to determine the extent to which one factor causes the existence of another.

When regression analysis is applied to the major procedural factors that might affect a city's forfeiture rate, only the presence of a supervisory system was found to be a significant causal influence. Similarly, among release criteria, community ties and past appearance record scored the highest.

B. Decreasing the Rate of Crime Attributable to Defendants Awaiting Trial

Seventy-two percent of cities where there is a system of pretrial supervision report that the rate of pretrial rearrests is less than the national average. However, none of the release criteria are related to the rearrest rate. Demographic characteristics of cities are of little value in accounting for variations in rearrest rates among cities.

Regression analysis indicates an important causal relationship between the presence of a supervisory system in a city and its rearrest rate. But none of the release criteria (community ties, present charge, etc.) achieved a significant score. As in the case of the forfeiture rate, the procedural factors as a group (supervisory system, place and method of notification, and verification) have a stronger causal influence on rearrest rates than do the

release criteria.

C. Effectiveness Rating

In nearly 60 percent of the cities whose bail system is above average in effectiveness (release of relatively large numbers of defendants without adversely affecting forfeiture or rearrest rates), a system of pretrial supervision was in effect. Conversely, almost 70 percent of the cities with a below average effectiveness rating were not utilizing such a system.

Interestingly, over 90 percent of the surveyed cities using some method of supervision are operating bail reform projects and nearly 66 percent of this group are able to maintain above average effectiveness.

Of those cities where bondsmen operate, 64 percent were below average in effectiveness, which is related to the finding that the presence of bondsmen is not linked to lower forfeiture or rearrest rates.

In cities whose bail systems are among the most effective, emphasis is placed on the defendant's past appearance record along with his community ties. Of those municipalities where present charge and prior criminal record are stressed, less than 40 percent were operating bail systems of above average effectiveness.

Demographically, the most effective bail systems are most commonly found in smaller cities (under 200,000 population), which have a low poverty level, small percentage of blacks, and a below average crime rate.

Again, the regression analysis finds the presence of a supervisory system as the most important causal influence.

D. Bail Reform Cities v. Traditional Cities

Since bail reform projects constitute the principal alternative to the traditional money bail system, a crucial question is whether such projects really make a difference to the average defendant. Table 5 indicates that 58

Table 5
Reform v. Traditional

Output Categories	Trad. Cities	Reform Cities
Effectiveness Rating		
Below Natl. Avg.	25 (62%)	13 (42%)
Above Natl. Avg.	14 (38)	18 (58)
% Released on Recognizance		
Below Natl. Avg.	24 (67)	15 (47)
Above Natl. Avg.	12 (33)	17 (53)
Forfeiture Rate		
Below Natl. Avg.	17 (50)	16 (53)
Above Natl. Avg.	17 (50)	14 (47)
Rearrest Rate		
Below Natl. Avg.	16 (45)	15 (52)
Above Natl. Avg.	19 (55)	14 (48)
% Using Bondsmen		
Below Natl. Avg.	14 (46)	23 (72)
Above Natl. Avg.	16 (54)	9 (28)
% Detained		
Below Natl. Avg.	14 (40)	17 (55)
Above Natl. Avg.	21 (60)	14 (45)

percent of bail reform cities operate their pretrial release system at above average effectiveness, while only 38 percent of traditional cities do so.

Also, Table 5 reveals that only one-third of traditional cities have an above average release-on-recognizance percentage, whereas over half the reform cities are above this level. Table 4 indicated that on average 21 percent of all defendants were released on their own recognizance. When allocated to reform and traditional cities, the percentages are 24 and 16 percent, respectively. When this is considered in relation to the lower forfeiture and rearrest rates of accused released on their own recognizance, in comparison to money bail defendants (see Table 4), such facts fly in the face of claims that

bail systems utilizing the expertise of bondsmen can operate generally at higher levels of effectiveness.

Table 5 also confirms that the volume of business for bondsmen in reform cities is significantly lower than in traditional localities, which helps explain the antagonism manifested by the bail bonding industry toward reform projects.

One would expect that since reform cities have been releasing a greater percentage of defendants than in traditional cities, more of the latter would have a detention rate above the national average. This assumption is supported by Table 5, which shows that 60 percent of the traditional cities have a detention rate above the national average (16 percent of defendants), while only 45 percent of the reform cities are detaining more than the 16 percent average.

In demographic terms, bail reform projects are more likely to be found in larger western cities.

As indicated, cities with reform projects are operating more effective bail systems than those found in traditional municipalities. This raises the important question of whether there are certain characteristics that help explain why some reform programs are more effective than others.

Sixty percent of reform projects initiated prior to 1965 tend to operate at above average effectiveness, perhaps because of their greater experience; only 40 percent of post-1965 projects achieved above average scores. Volunteers, in contrast to paid staff, were decidedly more successful in holding down the forfeiture rate, which was below average in 73 percent of volunteer-staffed projects. Projects with volunteer staffs released an above average percentage of defendants on their own recognizance and operated slightly more effective projects than did paid staffs.

The scope of the project's jurisdiction (misdemeanors, felonies, or

both), type of sponsoring agency (public or private), and source of funds did not bear a significant relationship to forfeiture rate, own-recognizance percentage, or project effectiveness.

Using regression analysis to discern cause-and-effect relationships, we find that projects with volunteer staffs release more defendants on their own recognizance and still maintain low forfeiture rates.

E. General Conclusion

Interestingly, the information developed by personal interviews in the 11 cities was in virtual agreement with the data developed by the 72-city mailed questionnaire. In a nutshell, bondsmen are not essential for an effective system of pretrial release; indeed, bail reform projects have outperformed bondsmen by releasing more defendants and in so doing have better safeguarded the rights of the accused, more effectively protected the public from "pretrial crime," assured the appearance of a greater percentage of defendants for trial, and saved cities a good deal of money in the process.

END