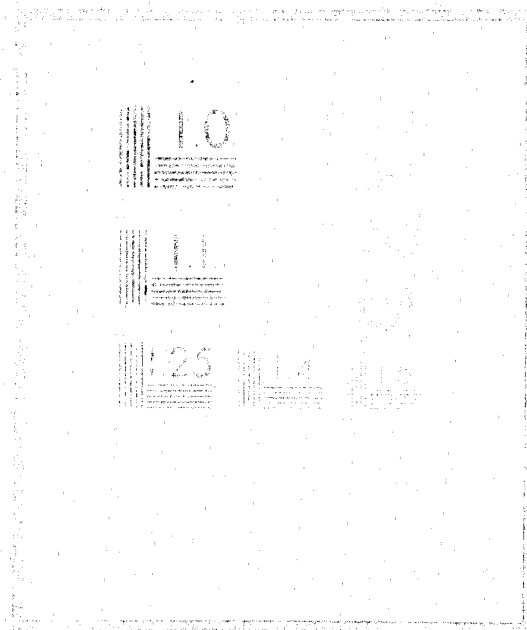


NCJRS

This publication was produced from documents received for
inclusion in the NCJRS data base. Since NCJRS cannot exercise
control over the physical condition of the documents submitted,
the publisher cannot accept any responsibility for inaccuracies or
omissions that may appear in the documents included.



Microfilm editions of this publication are available from the
National Criminal Justice Reference Service, P.O. Box 117, Springfield, MA 01101.

Points of view or opinions stated in this document are
those of the author(s) and do not represent the official
position or policies of the U.S. Department of Justice.

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

6/7/77

im ed

Prepared at the Request of:

Mr. Ray Casner, Assistant Manager, Mecklenburg County

THE BAIL SYSTEM IN CHARLOTTE, 1971-73

APRIL 4, 1974

MCJPP 75

Prepared by:

Stevens H. Clarke
Mecklenburg Criminal Justice Pilot Project
Institute of Government
University of North Carolina at Chapel Hill

39750

NCJRS
MAR 15 1977
ACQUISITIONS

THE BAIL SYSTEM IN CHARLOTTE, 1971-73

The preparation of this document was supported by grant 73-NI-04-0002 from the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration, United States Department of Justice. The fact that the National Institute of Law Enforcement and Criminal Justice furnished financial support to the activity described in this publication does not necessarily indicate the concurrence of the Institute in the statements or conclusions contained therein.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	iii
SUMMARY AND CONCLUSIONS	iv
I. INTRODUCTION	1
A. Forms of Bail	1
1. Release by a Bondsman	1
2. Release by the PTR Program	2
3. Release by Posting "Cash Bond"	5
4. Release on Unsecured Appearance Bond ("NPU Release)	6
5. Release on the Defendant's "Own Recognizance" and "Property Bond"	7
B. The Study Data: How It was Collected and What It Means	8
C. Some Precautions Regarding Inferences from the Bail Study Data	12
D. Tests of Statistical Significance	14
II. BAIL SYSTEM CHANGES, 1971-1973	16
A. Bail Opportunity	16
B. Failure to Appear in Court	17
C. Rearrest on New Charge While on Bail	27
D. Relative Frequency of Various Forms of Bail	30
III. ANALYSIS OF THE 1973 DATA	34
A. Factors Affecting Failure to Appear	34
B. How Much Nonappearance is Prevented by the PTR Program's System of Postrelease Supervision?	40
C. Factors Affecting Rearrest While on Bail	42
D. Is the Lower Bail Opportunity of Felony Defendants Justifiable?	48
IV. SUGGESTIONS ABOUT PREDICTING NONAPPEARANCE AND SETTING CONDITIONS OF RELEASE	52
FOOTNOTES	58
APPENDIX	62

(TABLE OF CONTENTS cont.)

TABLES

Table 1.	Numbers of Defendants Arrested in First Quarter of 1971, 1972, 1973, by Type of Release Prior to Trial	3
Table 2.	Failure to Appear and Rearrest on New Charge Before Trial for All Defendants Released, 1971, 1972, and 1973, by Type of Release	18
Table 3.	Proportion of Defendants Released, by Income, Race, Offense Seriousness, Type of Release, Employment, and Criminal History, 1971 through 1973	21
Table 4.	Disposition Time for Cases in Charlotte Bail Study Samples, 1971, 1972, and 1973 (Unit: Days) .	26
Table 5.	Fraction of Released Defendants Who Fail to Appear, by Disposition Time and Criminal History [Includes All Forms of Release]*	35
Table 6.	Fraction of Defendants Who Fail to Appear by Disposition Time, Criminal History, and Type of Release	36
Table 7.	Fraction of Released Defendants who Fail to Appear, by Income, Charlotte Residence, and Criminal History [Includes All Forms of Release] .	37
Table 8.	Fraction of Released Defendants Who Fail to Appear, by Income, Charlotte Residence, Criminal History, and Type of Release	37
Table 9.	Fraction of Released Defendants who Fail to Appear, by Employment Status and Criminal History [Includes All Forms of Release]	38
Table 10.	Fraction of Released Defendants Who Fail to Appear, by Employment Status, Criminal History, and Type of Release	38
Table 11.	Rate of Rearrest on New Charge while on Bail, Controlling for Criminal History and Disposition Time [Includes All Forms of Release]	43
Table 12.	Rate of Rearrest on New Charge While on Bail for PTR and Bondsman Releasees, Controlling for Criminal History and Disposition Time [Includes All Forms of Release]	44
Table 13.	Rate of Rearrest on New Charge While on Bail, Controlling for Race, Income, Charlotte Residence and Criminal History [Includes All Forms of Bail]	46
Table 14.	Rate of Rearrest on New Charge While on Bail, Controlling for Race, Income, Charlotte Residence Criminal History, and Type of Release	47
Table 15.	Fraction of Defendants Who Fail to Appear in Court, by Criminal History and Seriousness of Charge [Includes All Forms of Release]	49
Table 16.	Fractions of Defendants Rearrested on a New Charge While on Bail, by Criminal History and Seriousness of Original Charge [Includes All Forms of Release]	50

ACKNOWLEDGEMENTS

In obtaining the data on which this study is based, I relied on the help of a great many people in Charlotte. I would like to express my gratitude especially to the Hon. Robert M. Blackburn, Clerk of the Superior Court, Mr. Willie Gibson, Assistant Clerk of Superior Court, Mr. Michael Creech, former Assistant Clerk of Superior Court (now with the District Attorney's Office), Mr. Robert L. Rinehardt and Mr. Jack Moss, Assistant Clerks of Superior Court, Mr. Herbert Mann, Director of the Mecklenburg Pre-Trial Release Program, and Capt. E. P. Capell and Sgt. Thomas Griffin of the Charlotte Police Department. Those who extracted the data from official records and coded it for keypunching, including Ms. Susan M. Jay (Coding Supervisor), Ms. Catherine Cauthorne (Research Assistant), Mr. Tim Murphy, Ms. Beth Young, and Ms. Catherine Cline (Research Aides), were diligent and efficient, and I am very grateful to them.

I would like to thank Mrs. Nancy Snypes (Research Assistant) for her hard work in developing the computer programs for statistical analysis, and Mr. Martin Feinstein and Mr. Rostyk Lewyckyj of the UNC Computation Center for their sampling and reformatting programs. Prof. Gary G. Koch of the UNC Department of Biostatistics designed the sampling procedure, and has provided answers to numerous questions about statistical interpretation which have been of great help to me.

SUMMARY AND CONCLUSIONSMethod.

Samples of about one-third of all criminal defendants arrested in Charlotte, North Carolina (excluding those arrested for drunkenness, traffic, and fish and game offenses) during the first quarters of 1971, 1972, and 1973, were traced through local police and court records in a study of bail opportunity, failure to appear in court, rearrest while on bail, and related factors.

Changes during the period 1971-73.

The most important change during this period was the initiation in July 1971 of the Mecklenburg County Pre-Trial Release (PTR) Program, which releases defendants on unsecured bond after a background investigation and employs a system of weekly call-ins and mailed reminders to supervise them after release. No relevant changes in state law occurred.

Bail opportunity has generally improved, as shown by the fact that the proportion of all defendants not released before trial has decreased from 12 per cent in 1971 (prior to the PTR program) to 8 per cent in 1973. For felony defendants, who have always been at a disadvantage with regard to bail opportunity, the proportion not released has dropped from 34 per cent in 1971 to 22 per cent in 1973, due to the PTR program and to a greater use by judges of release of defendants on "their own recognizance", which is probably at least partly attributable to PTR. A small but statistically significant inequality in bail opportunity persists with regard to the black and low income defendant, despite the PTR program, which has tended to reduce inequality.

The fraction of defendants who failed to appear in court while on bail was 12 per cent in 1971, then dropped to 5 per cent in 1972, and in 1973 rose to 10 per cent -- close to its former level. The increase in 1973 is mainly among bondsmen's clients, whose nonappearance rate was 16 per cent in 1971, 7 per cent in 1972, and increased to 16 per cent in 1973. The primary reason for the increase in 1973 seems to be increased court delay (the median number of days from arrest to disposition increased 60 per cent for all bailed defendants from 1972 to 1973, and 49 per cent for those released by bondsmen); a partial turnover of bondsmen may also be a factor, with one experienced bondsman leaving the business and several less experienced men entering it toward the end of 1972.

Presumably, increased court disposition time, which means more time at liberty for the bailed defendant, increases the chance that the defendant will miss a scheduled court appearance, either through forgetfulness or deliberately. The PTR program has been able to resist the influence of increased court delay on nonappearance; this is probably due to its postrelease supervision and also may to some extent be due to inherent characteristics of the defendants it currently releases.

The fraction of defendants who were rearrested on new charges while on bail rose significantly in 1973 to 10 per cent from its 1972 level of 6 per cent. Like the increase in nonappearance, the increase in rearrest is concentrated among bondsmen's clients [although those who fail to appear and those who are rearrested are usually not the same persons], and is mainly due to the increase in court disposition time, affording the released defendant more time to commit an offense and be arrested again before his first case is disposed of.

Changes in the proportion of defendants' release statuses (as defined in the first section of the report) over the three-year period have been as follows. Those not released at all have declined from 12 per cent in 1971 to 8 percent in 1973. Those released by the PTR program, which did not exist in 1971, constituted 29 per cent by 1973. In 1973, as in 1972, about two-thirds of those released by PTR would probably have been released by magistrates on unsecured bond had the PTR program not existed; of the remaining one-third, about half would otherwise have been bondsmen's clients and about half would not have been released at all without PTR. Release on cash bond and "own recognizance" have become more frequent, increasing from 3 and 1 percent, respectively, in 1971, to 9 and 4 per cent in 1973. Release on unsecured bond (mostly by magistrates) without PTR involvement has declined from 28 to 8 per cent, due to a decision by local officials to have the PTR program take responsibility for most defendants formerly released in this way. Bondsmen have suffered a substantial loss of clients; their fraction of the total went from 56 per cent to 41 per cent, with most of the losses going to the PTR program or to cash bond, the use of which has been encouraged by PTR. Nevertheless, in 1973, as in 1972, low income defendants released by bondsmen outnumber those released by PTR by a ratio of 1.6 to 1.

Factors influencing nonappearance and rearrest while on bail.

With regard to failure to appear in court, the most strongly related factors studied are court disposition time, form of release, the defendant's criminal history (i.e., number of prior arrests locally), and whether or not the defendant has a local residence. The nonappearance rate (proportion failing to appear) ranges from 1 per cent when disposition time does not exceed 30 days to 35 percent when the defendant has two or more prior arrests and the disposition time is over 60 days. Income is also related to nonappearance, but less strongly; surprisingly, employment status, seriousness of charge (felony or misdemeanor), and the defendant's race seem not to be related at all to nonappearance. Controlling for all other relevant factors, those released by the PTR program have much lower nonappearance rates than those released by bondsmen. This difference in rates is at least partly due to PTR's system of selection and postrelease supervision, and may also be due to differences in inherent or personal characteristics of the two groups of releasees that are not measured in the study.

PTR release was compared with another form of release -- release on unsecured bond (usually by a magistrate) without PTR involvement -- which has employed a similar type of prerelease investigation and has released a similar group of defendants, but has not employed postrelease supervision. The difference in nonappearance rates between PTR releasees and non-PTR unsecured bond releasees (1 per cent for the former and 6 per cent for the latter) indicates that PTR's post-release supervision can reduce the nonappearance rate by several percentage points. (Additional evidence of the value of postrelease supervision is provided by the fact that, while the increase in court disposition time from 1972 to 1973 raised the nonappearance rate for bondsman releasees, PTR's nonappearance rate remained very low.) PTR currently releases a rather low-risk group of defendants; its postrelease system might be even more effective in reducing nonappearance if applied to a higher-risk group of defendants such as some of the present clients of bondsmen.

With regard to rearrest on a new charge while on bail, the main factors were found to be court disposition time, the defendant's criminal history, and type of release. Rearrest rates varied from 5 per cent for defendants with fewer than two prior arrests where disposition time did not exceed 30 days, to 21 per cent for defendants with two or more prior arrests where disposition time was more than 30 days. Comparing PTR with bondsman releasees, the rearrest rate was much lower for PTR releasees when the disposition time was 30 days or less, controlling for criminal history, but virtually the same for PTR and bondsman releasees when the disposition time exceeded 30 days. This suggests that there may be an initial "warning effect" on the defendant of the PTR program's prerelease interview, which fades as time passes; it also underscores the importance of reducing unnecessary court delay.

Bail of defendants charged with felonies.

Although their disadvantage has been reduced in the 1971-73 period, felony defendants still have a harder time obtaining release than misdemeanor defendants; in 1973, 22 per cent of the felony defendants were not released, as compared with 5 per cent for misdemeanor defendants. This is probably primarily due to higher bond requirements for felony defendants and a greater degree of ineligibility for PTR (see section I(A) of report for definition of PTR eligibility requirements). Comparing those felony defendants that were released with misdemeanor defendants, no differences in nonappearance or rearrest were found, controlling for criminal history. This finding suggests that it may be possible to release more felony defendants than at present (perhaps with intensive post-release supervision) without producing an unacceptable increase in the nonappearance rate.

Effectiveness of various forms of release.

The PTR program has been a successful innovation. It has released some defendants who otherwise would not have been released at all or would have had to pay a bondsman's fee (although the bulk of those released by PTR probably would have been released in the past by magistrates on unsecured bond). The nonappearance rate of PTR releasees is extremely low -- probably irreducible -- compared with that of defendants released in all other ways, and controlling for all relevant factors

measured by the study. This low nonappearance rate is probably due to PTR's system of prerelease investigation and postrelease supervision (but may also be due partly to inherent characteristics of PTR releasees). The PTR investigation also seems to have a reducing effect on rearrest while on bail, although the effect does not seem to last more than 30 days after arrest; postrelease supervision probably does not affect rearrest. As the PTR program expands, taking responsibility for more and more defendants who otherwise would patronize bondsmen, it may be advisable to consider using postrelease supervision more selectively, and supervising more intensively when defendants have substantial arrest histories or when court delay seems likely to exceed 30 days. [See "Suggestions regarding setting of release conditions" on next page.]

The study has also shown that magistrates can be successful in releasing defendants after arrest. There are two good reasons for including magistrates in any program of expanding bail opportunity in Mecklenburg County or elsewhere in North Carolina. One reason is that, with proper administrative guidelines, magistrates are capable of selecting defendants with a very low chance of failing to appear, as the 1971 and 1972 data in Table 2 of this report indicate, and are able, concurrently with other duties, to release substantial numbers of defendants. Another reason is that magistrates--the first judicial officers whom the defendant sees after his arrest--can provide continuity of bail reform when federal funds run out. Bail reform programs like PTR are often federally funded. If magistrates are included in and trained by the federal programs, they can continue to provide a means of release at least to some defendants when the federal funding ends, even if the costs of the federal programs are not assumed by local or state governments. (The latter argument is probably less applicable to Mecklenburg County than to some other areas of the state with less financial capability.) It may also be advantageous to include other criminal justice officials -- for example, Sheriff's departments' personnel or probation officers -- in bail reform programs, training them in the use of postrelease supervision.

With regard to release by professional bondsmen, there is nothing in this study to indicate that this form of release should be discouraged or ended by law. Many find it abhorrent that the defendant should have to pay for his pretrial freedom, but it is hard to justify taking away this opportunity if there are defendants who seem to prefer it to others, even though it may hurt them financially. However, it is clear that there are problems with bondsman release in Mecklenburg County, as revealed by the fact that the nonappearance rate for bondsman releasees, down in 1972, was back to its 1971 level in 1973 (16 per cent), and the fact that the rearrest rate reached 13 per cent. Substantial parts of the increases are probably due to increased court disposition time. (Criminal justice officials in Mecklenburg County are concerned about court delay, and are already working on new methods such as court computerization which are believed to be effective in reducing unnecessary delay.) Bondsmen's practices may need some improvement. If call-ins by bailed defendants and mailed reminders of court dates are effective in reducing nonappearance, as the analysis of the PTR program suggests, perhaps bondsmen could employ these procedures, at least for supervision of their higher-risk clients, without adding too greatly to their administrative costs. To the extent that bondsmen with nonappearing clients

are now allowed to forfeit less than the full amount of the bond, stricter court practice regarding forfeiture might provide an incentive to bondsmen to improve their performance.

What about the other forms of bail? Cash bond seems to be working quite well, with low nonappearance and rearrest rates, and there is no apparent reason why it should be changed. As for property bond and release on "own recognizance", the study's samples of releasees in these categories are too small to permit reliable conclusions about effectiveness.

Suggestions regarding setting of release conditions.

Suggestions are made in the report regarding procedures to be followed if a system of release similar to PTR were to be used to release most defendants, including most of those who would now be released by bondsmen. The suggestions include intensifying postrelease supervision as disposition time (time defendant's case is pending) increases, and letting the initial form of postrelease supervision depend on the defendant's criminal history and whether he has a local residence. Because about two-thirds of the defendants currently released by PTR would probably have a very low chance of nonappearance (5 or 6 per cent) even without postrelease supervision, it may be desirable to permit magistrates to release this low-risk group without any postrelease supervision, and to have PTR release and supervise those defendants not released by magistrates. Centralized administration of all forms of bail within each judicial district seems likely to promote fairness and efficient operation.

I. Introduction

This report supplements an earlier report¹ dealing with the bail systems in Charlotte and Mecklenburg County, North Carolina, in 1971 and 1972. Like the earlier report, it is concerned with opportunity for bail, failure of bailed defendants to appear, and rearrest on new charges while on bail. It examines these three variables in relation to characteristics of defendants, court delay, and specific forms of bail, especially release secured by professional bondsmen and release recommended by the Mecklenburg County Pre-Trial Release Program.^{1A}

A. Forms of Bail

"Bail" and "release", used synonymously in this report, refer to a legal means of freeing the criminal defendant prior to court disposition of charges against him. The purpose of bail, generally speaking, is to prevent the defendant from being jailed prior to his trial and to assure that he will appear in court when required. North Carolina law regarding bail includes no prohibitions against excessive bail in both the state and federal constitutions (N.C. Const., Art. I, Sec. 27, and U. S. Const., Amend. VIII), and the sections of the General Statutes set out in the Appendix.² Three aspects of the statutes are relevant here.

(1) It is clear that the right to bail is a conditional right, in the sense that whatever form of release the defendant receives, the releasing officer may set conditions or require a "recognizance" [as used in the statutes, an acknowledgement that the defendant will owe a certain sum of money to the state if he fails to appear in court] for the purpose of insuring the defendant's appearance in court. (2) It is also clear that

there is always a potential penalty for failing to appear -- if not the threat of forfeiting the amount stated in the "recognizance", then a misdemeanor conviction. (3) The chief district judge in each Judicial District, including the Twenty-Sixth (Mecklenburg County), has the authority to issue recommended policies regarding bail generally, including the amount of the "recognizance" and guidelines for other types of release.

In Charlotte, as in the rest of North Carolina, there are currently six methods of releasing a defendant prior to trial. The relative frequency of usage of these forms of release is shown in Table 1 below.³

1. Release by a Bondsman

The most frequent type of release, called "bondsman release" in this report, is obtained by posting an appearance bond secured by a professional bondsman acting as surety in return for a fee. The fee is not limited by law in Mecklenburg County, although it is in some counties of the state. It may range from 10 to 25 or 30 percent of the amount of the bond. The "amount of the bond" -- the amount to be forfeited to the court if the defendant fails to appear -- depends on the seriousness of the charge or charges against the defendant and is set according to a schedule of minimum amounts for each charge prescribed by the chief district judge.

2. Release by the PTR Program

The second most common type of release, called "PTR" in this report, involves the Mecklenburg County Pre-Trial Release (PTR) Program, which began operating in July 1971. Under the terms of the PTR program, any defendant who is a resident of Mecklenburg County and is not charged with public drunkenness or a serious offense of certain types⁴ is eligible

Table 1. Numbers¹ of Defendants Arrested² in
First Quarter of 1971, 1972, and 1973, by
Type of Release Prior to Trial

	1. 1971	2. 1972	3. Percentage Points Gained or Lost, 1971-72	4. 1973	5. Percentage Points Gained or Lost, 1972-73.
1. No release	314 (12.2%)	238 (8.6%)	-3.6%	202 (7.8%)	-0.8%
2. Bondsman	1434 (55.6%)	1348 (48.6%)	-7.0%	1069 (41.4%)	-7.2%
3. PTR Program	0 (0.0%)	689 (24.9%)	+24.9%	760 (29.4%)	+4.5%
4. Non-PTR Unsecured Bond (NPU) Release (Magistrate or Judge)	712 (27.6%)	279 (10.1%)	-17.5%	210 (8.1%)	-2.0%
5. Released on Own Recognizance by Judge	24 (0.9%)	40 (1.4%)	+0.5%	90 (3.5%)	+2.1%
6. Cash Bond	84 (3.3%)	158 (5.7%)	+2.4%	229 (8.9%)	+3.2%
7. Property Bond	9 (0.3%)	19 (0.7%)	+0.4%	22 (0.9%)	+0.2%
8. Total	2577 (100.0%)	2771 (100.0%)	---	2582 (100.0%)	---

¹Projected from stratified sample by counting each defendant in the actual sample not as one, but as a weighted amount equal to the inverse of the sampling fraction of his sampling subpopulation. The overall sampling fraction is about one-third each year.

²Excluding those arrested for motor vehicle offenses (but including drunken driving) and excluding those arrested for wildlife violations and public drunkenness.

for consideration for a PTR recommendation of release. This recommendation is based on a point score determined from an investigation of factors including these:

- The length of the defendant's residence in Mecklenburg County
- Whether he lives with his family or a friend
- Whether he has contact with his family
- Whether he is employed
- The length of his employment and his employer's willingness to continue his employment or re-hire him after his court involvement
- Whether he is a student in good standing
- Whether he has ever failed to appear in court [nonappearance with a satisfactory excuse is not counted]
- Whether to the investigator's knowledge the defendant is a drug addict or alcoholic
- The extent and recency of the defendant's criminal convictions in Mecklenburg County

Only about 15 percent of the defendants investigated by PTR fail to receive a recommendation of release.

The PTR investigation usually occurs shortly after the arrested defendant is "booked", i.e., brought before a magistrate by the arresting officer. (Throughout 1973, the PTR investigative staff has been on duty around the clock, in contrast to 1972, when PTR investigators were not available between midnight and 7 AM.) After the PTR investigator makes a recommendation for or against releasing a particular defendant, the decision to release is made by a judge, if the defendant is charged with a felony, and otherwise by a magistrate. (This means that it usually takes longer for the felony defendant to obtain PTR-recommended release than the misdemeanor defendant. Magistrates are available 24 hours each day, whereas judges are normally available to approve PTR-recommended release only during

court hours---approximately 9 AM to 5 PM, Monday through Friday--, and thus the PTR-recommended felony defendant may have to wait overnight or over the weekend for judge approval if he is arrested after court closes, as many are.) Once his release has been approved by a magistrate or judge, the PTR-recommended defendant signs an unsecured appearance bond (the meaning of this bond is explained below).

PTR release is the only form of bail in which the defendant is formally supervised after release. All defendants whose release has been recommended by PTR are required to agree in writing to telephone the PTR office at a specified time each week and to report to the PTR office at 8:15 AM on any day of a scheduled court appearance to indicate their readiness to go to court. Before each court appearance date, each PTR-supervised releasee receives a form letter reminding him of his obligation to appear. If a releasee seems to be irresponsible about calling the PTR office each week, he may be warned that his release can be terminated if he does not cooperate. The PTR-released defendant who fails to appear in court may forfeit the amount of his unsecured bond and may also be convicted of a misdemeanor under G.S. 15-103.1.

3. Release by Posting "Cash Bond"

The third most common form of bail in 1973, cash bond, has been increasing in frequency of use since 1971. (This may be attributable in part to the PTR program, whose investigators routinely inform defendants of the availability of this type of release.) "Cash bond" refers to the release of the defendant upon his deposit of the full minimum amount set by the chief district judge (or a higher amount set by any judge with jurisdiction of his case) for the particular offense with which he is charged. This amount is, of course, refunded upon disposition of his case. According to the 1973 study data, the defendant released on cash

bond is almost always charged with a misdemeanor, the most common types being drunken driving, worthless check, simple assault, and domestic nonsupport.⁵

4. Release on Unsecured Appearance Bond ("NPU" Release)

The fourth most common type of release is release on unsecured appearance bond without the involvement of the PTR program. (This form of release is here termed "non-PTR unsecured bond" or "NPU" release.) Although no PTR investigation or recommendation is made, the defendant in this situation, just as in the PTR situation, signs an unsecured bond, and is then released by a magistrate (or, less often, a judge). This bond is a promise unsecured by money, property, or surety that the defendant will pay a certain sum of money if he fails to appear in court. The defendant on NPU release, like the defendant released by PTR, stands to forfeit his unsecured bond and also to be convicted of a misdemeanor under G.S. 15-103.1 if he fails to appear.

Although NPU release has recently become less frequent, it was quite frequent in the past (see the Table 1 figures for 1971 and 1972). Bail guidelines issued by the chief district judge of the 26th Judicial District (Mecklenburg County) in December, 1970, permit magistrates to release on unsecured bond defendants who are North Carolina residents, not charged with felonies, not charged with drunken driving, assault on or resisting a public officer, any drug offense, or various other serious vehicular offenses, and able to qualify on a point system. This point system for magistrates is quite similar to the one used by the PTR program, although somewhat less complicated. The factors it takes into consideration are length of residence in the county, willingness of the family or employer of the defendant to co-sign the unsecured bond [which in a

sense makes it a secured bond], the magistrate's personal knowledge of the defendant or of his reputation, whether the defendant is represented by an attorney, and whether the defendant is married and living at home with his spouse or children. The principal difference between the magistrates' point system and the PTR point system is that the former does not include an investigation of criminal convictions while the latter does. However, the magistrates are free to consider criminal convictions if they wish, and may sometimes do so, since arresting officers may often know whether a defendant has a serious record and probably are not reticent about communicating such information to the magistrate at the time of booking. NPU release differs from PTR release in that, although it employs a point system to select releasees, it does not involve any postrelease supervision of the defendant. As row 4 of Table 1 indicates, NPU release has become much less frequent since the PTR program began operating (July 1971), because of a tacit decision by local officials to give the major responsibility for unsecured bond to PTR.

5. Release on the Defendant's "Own Recognizance" and "Property Bond"

The two remaining forms of bail are relatively infrequent. Release on the defendant's own recognizance is release by a judge on the defendant's unsecured promise to appear in court; failure to appear does not result in forfeiture of a specified amount of money, but it is punishable as a misdemeanor under G.S. 15-103.1. Release on property bond is release secured by a pledge of property -- the defendant's property or that of some other person who receives no fee for this service -- of sufficient value to cover the amount of bond.

B. The Study Data: How It was Collected and what It Means

Like the 1971-72 study data, the 1973 study data consists of a random sample of approximately one-third of the defendants arrested in Charlotte during the first three months of the year, based on police records, not counting defendants charged with traffic and vehicular offenses (except for drunken driving defendants, who were included), defendants charged with public drunkenness, and defendants charged with "wildlife" offenses such as out-of-season hunting. The sample was stratified on race (Negro or Non-Negro) and type of offense (three types of felonies and five types of misdemeanors), these being the only types of relevant information available on police arrest tapes. Generally, the figures discussed herein can be taken as representative of the entire populations of defendants arrested during the first three months of the years indicated, excluding traffic, wildlife, drunkenness, and vehicular offense defendants (except those charged with drunken driving).⁶

All data was captured by tracing the defendants and their cases through police and criminal court files. In the 1971 and 1972 data, very few defendants' cases had not been closed by September 30, 1972, the data collection cutoff date, and those that were still open as of that date were simply ignored. In the 1973 data, an appreciable number of defendants' cases (41 of 861) were open as of January 4, 1974. Information on these open cases was included in the data, using January 4 as a cutoff date.

The specific data captured include "dependent" variables --whether or not the defendant was released, whether he failed to appear in court, and whether he was rearrested on a new charge while on bail -- as well as "independent" variables such as the defendant's criminal record, employment status, and the like. The independent variables were defined as follows.

Bail opportunity was based on actual release; if a defendant's court record showed any release before disposition of his case or cases⁷, he was considered to have "had the opportunity" for bail, and if not, he was considered not to have had the opportunity, the assumption being that no one who "has the opportunity" to be released would choose to remain in detention. If a defendant's release was revoked in some way before court disposition of his case, he was still counted as having been released. Failure to appear was determined according to whether a capias (bench warrant) issued for failure to appear in court was found in the court record of the defendant's case or cases; if such a capias was found, the defendant was counted as having failed to appear, and otherwise as not having failed to appear. ["Failure to appear" in this study is not equivalent either to becoming a fugitive or to forfeiting bond. Many who fail to appear may do so for innocent reasons such as genuine ignorance or their obligation; many for whom a capias is issued may reappear later without becoming fugitives or without the bond amount being forfeited by them or their sureties.] Rearrest on a new charge while on bail was determined by inspecting the combined arrest records of the city and county police departments. If these records showed that the defendant had been arrested for an alleged new offense (not counting drunkenness, wildlife, traffic, or vehicular offenses, but including drunken driving) in Mecklenburg County between the date of the original arrest and the date of court disposition of the last case associated with that arrest, the defendant was counted as having been rearrested, and otherwise as not having been rearrested.

The "independent" variables (factors) believed to be related to bail opportunity, failure to appear, and rearrest while on bail were type of release, sex, age, income, race, seriousness of offense charged, criminal history, employment status, family ties, residence in the Charlotte area, and disposition time (number of days from arrest to court disposition). Some crude hypotheses were developed before the study data were collected concerning the relationships of the various factors to bail opportunity, nonappearance, and rearrest. (Not all of these hypotheses were supported by the study, and some were rejected.) The hypothesized relationships are summarized below, except those concerning type of release, which are dealt with in Section III of the report.⁸

Sex of the defendant is considered important because males are known to be more frequently and seriously delinquent than females. This suggests a relationship to rearrest while on bail, perhaps to failure to appear in court, and also, indirectly, to bail opportunity.

Age is thought to be related to the response variables for somewhat the same reasons as sex: the well-known variation in delinquency- and crime-proneness with age. However, age is not included in the present analysis because its relationship to failure to appear, rearrest, and bail opportunity is probably much less direct than that of other variables which were considered.

Income, a good measure of socio-economic status, is known to be related to crime or at least to official responses to alleged crime, and may therefore be related to bail variables.

Race is included for the same reasons as income.

Seriousness of the offense charged is likely to affect the decision whether to release the defendant, due to judgments about his reliability and about the risk he presents to the community (if bailed), based on what he is alleged to have done.

Family ties of the defendant are known to be related to delinquency and crime and may also be related to bail variables. The PTR program considers information on family ties as a formal part of its investigation, and other bail decision-makers (judges, magistrates, bondsmen) may also consider such information informally. However, data on family ties were not available except for PTR-released defendants, and thus family ties are not used as a variable in the present analysis.

Residence in the Charlotte area is considered by PTR, by bondsmen in setting their fees, and by magistrates in releasing defendants on unsecured bond under the December 1970 guidelines. This variable may also be related to failure to appear and rearrest in the same way that family ties may be, and was included in the study.

Criminal history is considered for the same reasons as seriousness of the offense charged, in the decision to permit bail. Because it is related to future criminality, it may also be related to failure to appear and rearrest.

Employment status is, like family ties, an indicator of the defendant's attachment to conventional norms and may therefore be related to court appearance and rearrest. It is considered formally in the PTR point score system and in the December 1970 unsecured bond guidelines, and is often considered informally by judges and bondsmen.

Disposition time (the number of days between the defendant's arrest and the date of court disposition of his court case), while not related to bail opportunity, may well be related to failure to appear and rearrest. The longer the defendant's case is pending, the more time he has in which to forget an appearance date or to decide to ignore it or flee, and the more time he has in which to commit another crime if he is so inclined.

The way in which some of the above variables were quantified in the data collection requires explanation. Income information was based on the median 1969 annual income of the census tract of residence of the defendant: "low income" for \$6999 or less, "high income" for \$7000 and over, and "unclassified income" for defendants whose police and court records showed no address within Charlotte and who therefore could not be placed in a census tract.⁹ Residence in the Charlotte area was determined in the same way as "unclassified income". Race, identified as either Negro or Non-Negro, was determined from the police arrest report made out at the time of arrest. Type of offense was determined from the original charge on the warrant and is either felony (essentially, an offense carrying a maximum penalty of more than two years in prison

under North Carolina law) or misdemeanor (an offense carrying a lesser penalty). More detailed offense information was captured but was not especially helpful in the analysis. When an arrested defendant had more than one charge, his type of offense was determined from whichever of his charges (cases) received the most severe court disposition. Criminal history was based on a count of arrests of the defendant in Mecklenburg County prior to the arrest captured in the data set, not including drunkenness, traffic, wildlife, or vehicular arrests except for drunken driving. Prior arrests were counted whether or not they resulted in conviction. In the analysis, prior arrests are categorized as (1) zero or one prior arrests, or (2) two or more prior arrests. (There proved to be little difference between defendants with no prior arrests and those with only one.) Data on employment status are taken from a notation made by the arresting officer on the arrest report as to whether the defendant is employed or a student. For about 16 percent of the defendants, this entry was either blank or marked "unknown". Defendants may not necessarily tell the truth regarding their employment status, and there is no special reason for the arresting officer to try to verify the defendant's response. Therefore, statements in this report about employment status and its effect on other variables should be considered somewhat tentative.

C. Some Precautions Regarding Inferences from the Bail Study Data

This study compares various forms of bail, but is in no sense a controlled experiment. In order to make inferences of the kind based on scientifically controlled experiments - as, for example, in experimental psychology - it would have been necessary to select defendants at random from predetermined groups for release on each type of bail and then to compare the resulting failure to appear and rearrest rates. Obviously, this would have been both illegal and immoral. What was done instead

was to compare defendants who were actually selected -- for whatever reasons -- for various types of bail. The resulting data allow general statements to be made only about the class of defendants who actually obtained release on each type of bail, and not about a more generalized class of defendants. Also, the fact that defendants released on a certain form of bail have a certain failure to appear rate reflects not only the characteristics of that form of bail, but also the characteristics of the defendants who choose, or are chosen for, that type of bail. Because the factors believed relevant to bail have to a large extent been captured as data in the study -- type of release, disposition time, criminal history, etc. -- considerable confidence can be had in the data as it is used in this analysis. However, it is not possible to capture all information relevant to which type of release a defendant will receive. The releasing decision may involve criteria that, although they may be subjective, are closely related to failure to appear and rearrest while on bail. The comparison below of PTR and other forms of release will explore this point more fully.

In the present study, then, there is no way of distinguishing the influence of the defendant's characteristics from the influence of the operation of a particular form of bail. However, one is at least able to compare defendants on different types of bail who have the same characteristics. The effect of partitioning the comparisons in this way is that factors such as income, criminal history, and the like can be excluded as explanatory factors. In other words, if, say, low income felony defendants on bondsman release are compared with those on PTR release, and differences in failure to appear and rearrest rates are observed, it is clear that the difference is not due solely to the income and offense of the defendants; the difference must be ascribed to

difference in rates -- say 5 percent for one group and 10 percent for the other -- may not be significant; however, if the sample size is larger, this difference in percentages may be significant -- i.e.

indicative of a true difference between the two groups from which the sample is drawn. In a sample of given size, the larger the difference in proportions, the more likely it is to be significant.

II. Bail System Changes, 1971 - 1973

A. Bail Opportunity

As Table 1 indicates, bail opportunity in Charlotte has improved in the last three years. The percentage of defendants not released has dropped from 12 percent in 1971 to 9 percent in 1972 and 8 percent in 1973. A small but statistically significant degree of inequality of bail opportunity with respect to race and income, not present in 1972, has appeared in 1973 (see Table 3). Comparing proportions not released, we find that in the 1972 data 10 percent of Negro defendants and 7 percent of other defendants were not released; this difference in percentages was not statistically significant. In the 1973 data, the corresponding figures are 10 percent for Negro defendants and 6 percent for others, a difference that proved to be statistically significant. The proportions not released for low and high income defendants were 9 percent and 6 percent in 1972 (not a significant difference), and 10 and 4 percent in 1973 (a significant difference). What has happened is that differences in bail opportunity, too small in 1972 to be certain about given the sample size, have in 1973 become slightly larger, just large enough to be significant -- i.e. to be considered indicative of true, but small, differences in the overall defendant population. The inequality that has thus emerged with respect to race and income is a result of bail opportunity improving slightly for white and high income defendants but remaining the same for Negro and low income defendants.

One of the most important factors in whether a defendant received bail has been whether he was charged with a felony or misdemeanor. However, the proportion of felony defendants not released has decreased

from 34 percent in 1971 to 22 percent in 1973. Table 3 below reveals that the improvement in felony defendants' opportunity is due to the PTR program and also to increased use of cash bond and release on "own recognizance" [the latter, as will be explained below, may also be attributable partly to PTR]. Employment status continued in 1973 to have the same strong effect as in 1972. Two other variables are shown in Table 3 for 1973 that were not analyzed in the 1971-72 study: criminal history (prior arrests) and sex of defendant. Prior arrests (that is, whether the defendant had a record of two or more arrests in Mecklenburg County) turned out to be strongly related to bail opportunity; 5 percent of those with less than two prior arrests were not released, as compared with 12 percent of those with two or more. The defendant's sex also turned out to be of some importance, with only 3 percent of females failing to be released versus 9 percent for males -- a difference that is statistically significant and perhaps of interest to chauvinists of both sexes.

B. Failure to Appear in Court

Table 2 indicates that in the Charlotte bail system as a whole, the failure to appear rate was 12 percent in 1971, then dropped to 5 percent in 1972, and increased again to about 10 percent in 1973. Of the estimated 2,380 released defendants who were arrested in the first quarter of 1973 (excluding, of course, traffic, drunkenness, wildlife, and vehicular defendants except for drunken drivers) an estimated 243 failed to appear. It is easy to see that the problem of increased nonappearance is concentrated among bondsmen's clients; 173 (71 percent) of those who failed to appear in the 1973 study were released by bondsmen. The nonappearance rate dropped (although not significantly) for PTR

Table 2. Failure to Appear and Rearrest on New Charge Before Trial for All Defendants Released, 1971, 1972, and 1973, by Type of Release.

FAILURE TO APPEAR	1971		1972		1973	
	Failed	Total Released	Failed	Total Released	Failed	Total Released
1. Bondsman	222 (15.5%)	1434 (100.0%)	91 (6.8%)	1348 (100.0%)	173 (16.2%)	1069 (100.0%)
2. PTR Program	0 --	0 --	17 (2.5%)	689 (100.0)	11 (1.4%)	760 (100.0%)
3. Release on Unsecured Bond by Magistrate or Judge	41 (5.8%)	712 (100.0%)	9 (3.2%)	279 (100.0%)	22 (10.5%)	210 (100.0%)
4. Released on Own Recognizance by Judge	2 (8.3%)	24 (100.0%)	2 (5.0%)	40 (100.0%)	24 (26.7%)	90 (100.0%)
5. Cash Bond ²	0 (0.0%)	84 (100.0%)	12 (7.6%)	158 (100.0%)	11 (4.8%)	229 (100.0%)
6. Property Bond	0 (0.0%)	9 (100.0%)	0 (0.0%)	19 (100.0%)	2 (9.1%)	22 (100.0%)
7. Total Released	265 (11.7%)	2263 (100.0%)	131 (5.2%)	2533 (100.0%)	243 (10.2%)	2380 (100.0%)

¹Projected from stratified sample (overall sampling fraction is about one-third) by using weighted estimates. Percentages are more accurate than absolute counts.

²For defendants released on cash bond, "failure to appear" does not include those who failed to appear and were allowed to forfeit their bond, with no *capias* being issued.

REARREST	1971		1972		1973	
	Rearrested	Total Released	Rearrested	Total Released	Rearrested	Total Released
1. Bondsman	106 (7.4%)	1434 (100.0%)	77 (5.7%)	1348 (100.0%)	142 (13.3%)	1069 (100.0%)
2. PTR Program	0 --	0 --	54 (7.8%)	689 (100.0%)	59 (7.8%)	760 (100.0%)
3. Release on Unsecured Bond by Magistrate or Judge	53 (7.4%)	712 (100.0%)	7 (2.5%)	279 (100.0%)	5 (2.4%)	210 (100.0%)
4. Released on Own Recognizance by Judge	6 (25.0%)	24 (100.0%)	5 (12.5%)	40 (100.0%)	4 (4.4%)	90 (100.0%)
5. Cash Bond	3 (3.6%)	84 (100.0%)	0 (0.0%)	158 (100.0%)	13 (5.7%)	229 (100.0%)
6. Property Bond	0 (0.0%)	9 (100.0%)	4 (21.1%)	19 (100.0%)	11 (50.0%)	22 (100.0%)
7. Total Released	168 (7.4%)	2263 (100.0%)	147 (5.8%)	2533 (100.0%)	235 (9.9%)	2380 (100.0%)

releasees, and with regard to the other forms of bail, either the rate dropped or the contribution to the total is not substantial. The failure to appear rate for bondsman releasees, having dropped to 7 percent in 1972, has in 1973 gone back to its 1971 level of 16 percent. Why has this happened -- is it the fault of the bondsmen, or attributable to an increase in unreliability on the part of defendants, or caused by other factors? One possible explanation for the nonappearance increase among bondsman releasees is that the decrease from 1972 to 1973 in the bondsmen's clientele has been due to a loss of clients who would not have failed to appear, which has caused the nonappearance rate to increase. This explanation can be readily rejected by comparing the estimated total numbers of bondsman releasees in the 1972 and 1973 data sets. The total in 1972 was 1348, and in 1973 was 1069 -- a decrease of 279 defendants. Even if it is assumed that all the clients the bondsmen "lost" would have not failed to appear, and that about 91 clients would have failed to appear in 1973 just as in 1972, this would still indicate a nonappearance rate of only 8.5 percent (91/1069), about half of the actual rate of 16.2 percent. It also seems unlikely that the bondsmen could have had a greater proportion of high-risk clients in 1973, since the proportion of defendants not released did not decline appreciably from 1972 to 1973 and since the proportions of defendants on other forms of release all either increased or did not decline appreciably.

Another possible but unlikely explanation for the increase in nonappearance among bondsmen's clients is that a substantial change occurred from 1972 to 1973 in the appearance-related characteristics of arrested defendants coming into the criminal justice system. (As will be seen below, the most important characteristic appears to be criminal

history, although other factors also play a rôle.) A change in defendants' aggregate characteristics of the magnitude necessary to explain a doubling of the nonappearance rate for bondsman releasees seems unlikely to have occurred. Table 3 shows that there have been no large changes in the proportions of defendants with various characteristics on bondsman release from 1972 to 1973. Unfortunately, criminal history data are not available for 1971 and 1972, but there is no reason to believe that a defendant arrested in 1973 had a greater chance of having an arrest record than a defendant arrested in 1972.

The practices of professional bondsmen may provide a partial explanation for the increase in the nonappearance rate among bondsman releasees from 1972 to 1973. These practices can be a significant factor in nonappearance. In the 1971-72 study¹⁰, a sharp drop in the nonappearance rate of bondsmen's clients from 1971 to 1972 was attributed partly to the fact that a very active and apparently careless bondsman went out of business toward the end of 1971, leaving the field to others more cautious than he, and partly to increased vigilance on the part of the court with regard to bondsmen's affairs. Another factor influencing the bondsmen may have been concern about competition from the new PTR program, which was just beginning to operate at full capacity at the end of 1971. What analogous developments could there have been from 1972 to 1973 to explain the nonappearance rate increase? One possibility is that bondsmen's procedures may have become more lax.¹¹ That is, to the extent that bondsmen apply criteria other than financial for deciding whom to accept as clients (presumably partly subjective criteria), and to the extent that they warn clients informally regarding the consequences of failing to appear in court and remind them to appear, a relaxation of these procedures may have been partly responsible for the increase in

Table 3.

Proportion of Defendants¹ Released, by Income, Race, Offense Seriousness,
Type of Release, Employment, and Criminal History, 1971 through 1973.

	1. Not Released	2. Bondsman	3. P.T.R.	4. Non-PTR Unsecured Bond	5. Recognized	6. Cash Bond	7. Property Bond	8. Total Released	9. Total
1971									
1.1 Low Income	202 (14%) (64%)	856 (58%) (60%)	0 -	353 (24%) (50%)	18 (1%) (75%)	40 (3%) (48%)	5 (0%) (56%)	1272 (86%) (56%)	1474 (100%) (58%)
1.2 High Income	53 (6%) (17%)	419 (50%) (29%)	0 -	323 (39%) (45%)	5 (1%) (21%)	30 (4%) (35%)	4 (0%) (44%)	781 (94%) (35%)	834 (100%) (32%)
1.3 Uncl. Income	59 (22%) (19%)	159 (60%) (11%)	0 -	36 (13%) (5%)	1 (0%) (4%)	14 (5%) (17%)	0 (0%) (0%)	210 (78%) (9%)	269 (100%) (10%)
1.4 Total	314 (12%) (100%)	1434 (56%) (100%)	0 -	712 (28%) (100%)	24 (1%) (100%)	84 (3%) (100%)	9 (0%) (100%)	2263 (88%) (100%)	2577 (100%) (100%)
1972									
2.1 Low Income	136 (9%) (57%)	789 (55%) (59%)	393 (27%) (57%)	75 (5%) (27%)	30 (2%) (74%)	28 (2%) (18%)	6 (0%) (32%)	1321 (91%) (52%)	1457 (100%) (53%)
2.2 High Income	62 (6%) (26%)	379 (40%) (28%)	255 (26%) (37%)	186 (19%) (67%)	5 (1%) (13%)	72 (7%) (45%)	12 (1%) (63%)	909 (94%) (36%)	971 (100%) (35%)
2.3 Uncl. Income	40 (12%) (17%)	180 (53%) (13%)	41 (12%) (6%)	18 (5%) (6%)	5 (1%) (13%)	58 (17%) (37%)	1 (0%) (5%)	303 (88%) (12%)	343 (100%) (12%)
2.4 Total	238 (9%) (100%)	1348 (48%) (100%)	689 (25%) (100%)	279 (10%) (100%)	40 (1%) (100%)	158 (6%) (100%)	19 (1%) (100%)	2533 (91%) (100%)	2771 (100%) (100%)
1973									
3.1 Low Income	130 (10%) (64%)	602 (45%) (56%)	373 (28%) (49%)	67 (5%) (32%)	66 (5%) (74%)	93 (7%) (41%)	12 (0%) (54%)	1215 (90%) (51%)	1345 (100%) (52%)
3.2 High Income	39 (4%) (20%)	338 (34%) (32%)	353 (35%) (47%)	128 (13%) (61%)	17 (2%) (19%)	121 (12%) (52%)	9 (0%) (41%)	967 (96%) (41%)	1006 (100%) (39%)
3.3 Uncl. Income	33 (14%) (16%)	128 (56%) (12%)	33 (14%) (4%)	14 (6%) (7%)	6 (3%) (7%)	15 (7%) (7%)	1 (0%) (5%)	198 (86%) (8%)	231 (100%) (9%)
3.4 Total	202 (8%) (100%)	1069 (41%) (100%)	760 (29%) (100%)	210 (8%) (100%)	90 (4%) (100%)	229 (9%) (100%)	22 (0%) (100%)	2380 (92%) (100%)	2582 (100%) (100%)

Table 3 (cont'd)

	Not Released		Bondsman		P.T.R.		Non-PTR Unsecured Bond		Recognized	Cash Bond	Property Bond	Total Released		Total				
<u>1971</u>																		
4.1 Negro	187 (60%)	(15)	748 (52%)	(60%)	0 -	-	297 (42%)	(23%)	18 (75%)	(1%)	14 (17%)	(1%)	4 (44%)	(0%)	1081 (48%)	(85%)	1268 (49%)	(100%)
4.2 Non-Negro	127 (40%)	(10%)	686 (48%)	(53%)	0 -	-	415 (58%)	(32%)	6 (25%)	(0%)	70 (83%)	(5%)	5 (56%)	(0%)	1182 (52%)	(90%)	1309 (51%)	(100%)
4.3 Total	314 (100%)	(12%)	1434 (100%)	(56%)	0 -	-	712 (100%)	(28%)	24 (100%)	(1%)	84 (100%)	(3%)	9 (100%)	(0%)	2263 (100%)	(88%)	2577 (100%)	(100%)
<u>1972</u>																		
5.1 Negro	139 (58%)	(10%)	692 (51%)	(51%)	419 (61%)	(30%)	74 (27%)	(5%)	26 (65%)	(2%)	31 (20%)	(2%)	5 (26%)	(0%)	1247 (49%)	(90%)	1386 (50%)	(100%)
5.2 Non-Negro	99 (42%)	(7%)	656 (49%)	(48%)	270 (39%)	(19%)	205 (73%)	(15%)	14 (35%)	(1%)	127 (80%)	(9%)	14 (74%)	(1%)	1286 (51%)	(93%)	1385 (50%)	(100%)
5.3 Total	238 (100%)	(9%)	1348 (100%)	(48%)	689 (100%)	(25%)	279 (100%)	(10%)	40 (100%)	(1%)	158 (100%)	(6%)	19 (100%)	(1%)	2533 (100%)	(91%)	2771 (100%)	(100%)
<u>1973</u>																		
6.1 Negro	127 (63%)	(10%)	542 (51%)	(42%)	437 (57%)	(34%)	64 (31%)	(5%)	63 (70%)	(5%)	45 (20%)	(4%)	5 (23%)	(0%)	1157 (49%)	(90%)	1284 (50%)	(100%)
6.2 Non-Negro	74 (37%)	(6%)	527 (49%)	(41%)	323 (43%)	(25%)	146 (69%)	(11%)	27 (30%)	(2%)	184 (80%)	(14%)	17 (77%)	(1%)	1224 (51%)	(94%)	1298 (50%)	(100%)
6.3 Total	202 (100%)	(8%)	1069 (100%)	(41%)	760 (100%)	(29%)	210 (100%)	(8%)	90 (100%)	(4%)	229 (100%)	(9%)	22 (100%)	(0%)	2380 (100%)	(92%)	2582 (100%)	(100%)

Table 3 (cont'd)

	Not Released	Bondsman	P.T.R.	Non-PTR Unsecured Bond	Recognized	Cash Bond	Property Bond	Total Released	Total
<u>1971</u>									
7.1 Felony	134 (34%) (43%)	199 (51%) (14%)	0 - -	29 (7%) (4%)	17 (4%) (71%)	8 (2%) (10%)	9 (2%) (100%)	262 (66%) (12%)	396 (100%) (15%)
7.2 Misdemeanor	180 (8%) (57%)	1235 (58%) (86%)	0 - -	683 (31%) (96%)	7 (0%) (29%)	76 (3%) (90%)	0 (0%) (0%)	2001 (92%) (88%)	2181 (100%) (85%)
7.3 Total	314 (12%) (100%)	1434 (56%) (100%)	0 - -	712 (28%) (100%)	24 (1%) (100%)	84 (3%) (100%)	9 (0%) (100%)	2263 (88%) (100%)	2577 (100%) (100%)
<u>1972</u>									
8.1 Felony	101 (28%) (42%)	144 (41%) (11%)	33 (9%) (5%)	33 (9%) (12%)	24 (7%) (60%)	5 (1%) (3%)	19 (5%) (100%)	258 (72%) (10%)	359 (100%) (13%)
8.2 Misdemeanor	137 (6%) (58%)	1204 (50%) (89%)	656 (27%) (95%)	246 (10%) (88%)	16 (1%) (40%)	153 (6%) (97%)	0 (0%) (0%)	2275 (94%) (90%)	2412 (100%) (87%)
8.3 Total	238 (9%) (100%)	1348 (48%) (100%)	689 (25%) (100%)	279 (10%) (100%)	40 (1%) (100%)	158 (6%) (100%)	19 (1%) (100%)	2533 (91%) (100%)	2771 (100%) (100%)
<u>1973</u>									
9.1 Felony	78 (22%) (43%)	128 (36%) (12%)	49 (14%) (6%)	38 (11%) (18%)	35 (10%) (39%)	16 (4%) (7%)	16 (4%) (76%)	282 (78%) (12%)	360 (100%) (14%)
9.2 Misdemeanor	103 (5%) (57%)	939 (43%) (88%)	711 (32%) (94%)	172 (8%) (82%)	54 (2%) (61%)	213 (10%) (93%)	5 (0%) (24%)	2094 (95%) (88%)	2197 (100%) (86%)
9.3 Total	181 (8%) (100%)	1067 (41%) (100%)	760 (29%) (100%)	210 (8%) (100%)	90 (4%) (100%)	229 (9%) (100%)	21 (1%) (100%)	2380 (93%) (100%)	2558 (100%) (100%)

Table 3 (cont'd)

	Not Released	Bondsman	P.T.R.	Non-PTR Unsecured Bond	Recognized	Cash Bond	Property Bond	Total Released	Total
<u>1971</u>									
10.1 Employed	151 (9%) (48%)	896 (54%) (63%)	0 - -	535 (32%) (75%)	12 (1%) (50%)	67 (4%) (80%)	4 (0%) (45%)	1514 (91%) (67%)	1665 (100%) (65%)
10.2 Unemployes	81 (21%) (26%)	233 (60%) (16%)	0 - -	63 (16%) (9%)	8 (2%) (33%)	3 (1%) (4%)	1 (0%) (11%)	308 (79%) (14%)	389 (100%) (15%)
10.3 Student or unknown	82 (16%) (26%)	305 (57%) (21%)	0 - -	114 (22%) (16%)	4 (1%) (17%)	14 (3%) (16%)	4 (1%) (44%)	441 (84%) (19%)	523 (100%) (20%)
10.4 Total	314 (12%) (100%)	1434 (56%) (100%)	0 - -	712 (28%) (100%)	24 (1%) (100%)	84 (3%) (100%)	9 (0%) (100%)	2263 (88%) (100%)	2577 (100%) (100%)
<u>1972</u>									
11.2 Employed	95 (5%) (39%)	872 (50%) (65%)	438 (25%) (63%)	187 (11%) (67%)	20 (1%) (49%)	118 (7%) (75%)	11 (1%) (57%)	1646 (95%) (65%)	1741 (100%) (63%)
11.2 Unemployed	68 (15%) (29%)	192 (44%) (14%)	102 (23%) (15%)	47 (11%) (17%)	15 (3%) (38%)	16 (4%) (10%)	2 (0%) (11%)	374 (85%) (15%)	442 (100%) (16%)
11.2 Student or unknown	75 (13%) (32%)	284 (48%) (21%)	149 (25%) (22%)	45 (8%) (16%)	5 (1%) (13%)	24 (4%) (15%)	6 (1%) (32%)	513 (87%) (20%)	588 (100%) (21%)
11.4 Total	238 (9%) (100%)	1348 (48%) (100%)	689 (25%) (100%)	279 (10%) (100%)	40 (1%) (100%)	158 (6%) (100%)	19 (1%) (100%)	2533 (91%) (100%)	2771 (100%) (100%)
<u>1973</u>									
12.1 Employed	87 (5%) (43%)	707 (43%) (66%)	524 (32%) (68%)	119 (7%) (56%)	39 (3%) (44%)	169 (10%) (74%)	6 (0%) (27%)	1564 (95%) (66%)	1651 (100%) (64%)
12.2 Unemployed	47 (14%) (23%)	146 (42%) (14%)	69 (20%) (9%)	40 (12%) (19%)	22 (6%) (24%)	9 (3%) (4%)	11 (3%) (50%)	297 (86%) (12%)	344 (100%) (13%)
12.3 Student or unknown	68 (12%) (34%)	216 (37%) (20%)	167 (28%) (23%)	51 (9%) (25%)	29 (5%) (32%)	51 (9%) (22%)	5 (0%) (23%)	519 (88%) (22%)	587 (100%) (23%)
12.4 Total	202 (8%) (100%)	1069 (41%) (100%)	760 (29%) (100%)	210 (8%) (100%)	90 (4%) (100%)	229 (9%) (100%)	22 (1%) (100%)	2380 (92%) (100%)	2582 (100%) (100%)
<u>1973</u>									
13.1 Zero or one prior arrests	88 (5%) (43%)	603 (37%) (56%)	561 (34%) (74%)	158 (10%) (75%)	40 (3%) (45%)	175 (11%) (76%)	8 (0%) (36%)	1545 (95%) (65%)	1633 (100%) (63%)
13.2 Two or more prior arrests	114 (12%) (57%)	467 (49%) (44%)	199 (21%) (26%)	52 (5%) (25%)	49 (5%) (55%)	54 (6%) (24%)	14 (2%) (64%)	835 (88%) (35%)	949 (100%) (37%)
13.3 Total	202 (8%) (100%)	1069 (41%) (100%)	760 (29%) (100%)	210 (8%) (100%)	90 (4%) (100%)	229 (9%) (100%)	22 (1%) (100%)	2380 (92%) (100%)	2582 (100%) (100%)

failure to appear. Also, several former "runners" (bondsmen's assistants) apparently became bondsmen and went into business for themselves between 1972 and 1973; at the same time, a reputable and experienced bondsman left the business. The result of this "turnover" is that bondsmen as a group were somewhat less experienced in 1973 than in 1972; the inexperience may also have contributed to the increase in nonappearance. To conclude, although it is impossible to determine how great an effect changes in bondsmen's practices had, they have to be regarded as a possible explanation for at least part of the increase in nonappearance.

Most of the increase in nonappearance from 1972 to 1973 is probably due to an increase in court disposition time (number of days from arrest to court disposition). One would expect that, other things being equal, the defendant's chance of nonappearance would increase along with (although not necessarily in proportion to) disposition time. The longer the defendant has to wait for his court appearance, the more likely he may be to forget his obligation to appear or to make plans to avoid recapture. Table 4 shows a steady and rather ominous increase in disposition time during the period 1971-1973. [The most reliable of the time statistics is the median--the time above which and below which exactly half of the cases fall--; the mean is less reliable because it can be greatly influenced by a very few extremely delayed cases.] As the percentages at the bottom of Table 4 indicate, there was a very large increase in median disposition time from 1972 to 1973. For bondsmen's clients, disposition time increased by about 49 percent, and the failure to appear rate more than doubled.

One problem with increased disposition time as an explanation for increased nonappearance is that disposition time increased even more

Table 4. Disposition Time for Cases in Charlotte Bail
Study Samples, 1971, 1972, and 1973 (Unit: Days)

	Median	(Minimum, Maximum)	Mean	PERCENTAGE INCREASES OF MEDIAN TIMES
<u>1971</u>				From 1971 to 1972: Negligible
1. All released	24.8	(1, 571)	46.8	From 1972 to 1973: All released 60.2%
2. Bondsman releasees	33.4	(3, 571)	57.1	Bondsman 48.9%
3. PTR releasees [none in 1971]	--	--	--	PTR 69.9%
4. Not released	16.3	(0, 370)	29.9	Not released 50.8%
5. Felony defendants (released and not released)	46.4	(2, 449)	78.8	
6. Misdemeanor defendants (released and not released)	19.5	(0, 571)	38.6	
<u>1972</u>				
1. All released	25.9	(1, 449)	42.6	
2. Bondsman releasees	32.3	(3, 449)	49.5	
3. PTR releasees	18.3	(3, 173)	30.6	
4. Not released	18.7	(0, 247)	40.9	
5. Felony defendants (released and not released)	58.5	(0, 449)	72.2	
6. Misdemeanor defendants (released and not released)	22.6	(0, 390)	38.0	
<u>1973</u>				
1. All released	41.5	(0, 313)	58.2	
2. Bondsman releasees	48.1	(1, 313)	65.7	
3. PTR releasees	31.1	(3, 287)	44.1	
4. Not released	28.2	(0, 358)	88.9	
5. Felony defendants (released and not released)	69.4	(0, 358)	98.2	
6. Misdemeanor defendants (released and not released)	36.9	(0, 347)	51.8	

from 1972 to 1973 for PTR releases than for bondsman releasees, but the PTR nonappearance rate did not increase [in fact, it decreased, but not in a statistically significant sense]. This is probably due to the fact that PTR uses postrelease supervision, whereas bondsmen do not.

The defendant who is required to telephone PTR each week until his case is disposed of is aware that the authorities have not forgotten about him and is reminded of the risk of re-apprehension and a possible financial loss (forfeit of his unsecured bond) and misdemeanor conviction if he fails to appear; thus, postrelease supervision probably tends to overcome the effect of court delay on the defendant's willingness to appear in court. The postrelease supervision system of the PTR program is probably to a great extent responsible for preventing an increase in failure to appear among its clients as court delay increased from 1972 to 1973. This is quite a respectable achievement, considering the large increase in nonappearance among non-PTR releasees owing largely to increased court delay.¹²

C. Rearrest on New Charge While on Bail

The proportion of released defendants rearrested on new charges before court disposition was 7.4 percent in 1971, 5.8 percent in 1972, and then increased significantly to 9.9 percent in 1973 (see Table 2). Like increased nonappearance, increased rearrest is concentrated among bondsmen's clients; 142 (60 percent) of the estimated 235 who were rearrested in the 1973 study were released by bondsmen. Those who failed to appear in 1973 and those who were rearrested were not, by and large, the same persons; only 16 percent of those who failed to appear were rearrested on a new charge, and only 16 percent of those who were rearrested on a new charge failed to appear.¹³ We can again reject the

theory, as we did with regard to nonappearance, that the increase in rearrest among the bondsmen's clients has been due to a loss of low-risk clients and a gain in high-risk clients. If only zero-risk clients had been lost from 1972 to 1973, the expected rearrest rate for bondsmen would have been 7.2 percent (77/1069); the actual rate was 13.3 percent. It also seems improbable that bondsmen acquired a greater proportion of rearrest-prone clients in 1973, because the proportion of defendants not released did not change and the proportions of defendants on other forms of release either increased or did not change appreciably.

The increase in court disposition time is the most likely explanation of the increased rearrest rate. The defendant, once released, has a certain probability of offending and therefore of rearrest each day he is at liberty. Most released defendants obtain release within five days. Therefore, it seems reasonable to expect that the chance of rearrest increases with court disposition time. The data tend to support the theory that the rearrest rate increases with disposition time, although there are some complications. As Table 4 indicates, the median disposition time for all released defendants increased about 60 percent from 1972 to 1973; the rearrest rate (Table 2) increased about 71 percent (from 5.8 percent to 9.9 percent). Therefore, looking at bailed defendants as a group, the data are consistent with the theory that the rearrest rate increases with court delay. Looking at bondsman-released defendants separately, we find that their median disposition time was increased by 49 percent while their rearrest rate has more than doubled [it was 5.7 percent in 1972 and 13.3 percent in 1973]; this is also consistent with the theory. In contrast, while the median disposition time for PTR releasees increased by 70 percent from 1972 to 1973, the

rearrest rate remained the same. The doubt this fact raises about the theory that the chance of rearrest increases with disposition time is resolved to some extent by the fact that the rearrest rate for PTR releasees is lower than that of bondsman releasees only when disposition time does not exceed 30 days. This may well be due to a "warning effect" of initial contact with PTR, which "wears off" as time passes.¹⁴

D. Relative Frequency of Various Forms of Bail

Before discussing changes in the relative frequency of various forms of bail, it will be helpful to repeat some points made in the 1971-72 bail study. The conclusion reached there was that, although the PTR program probably took some clients away from bondsmen, most of the defendants released by PTR would have been released on unsecured bond by magistrates in the absence of PTR. There were several reasons for this conclusion: (1) the fact that PTR's and the magistrates' weekly release rates tended to fluctuate in tandem, one going up when the other went down; (2) the fact that PTR's point system was similar in a number of ways to the point system used by magistrates, described earlier in this report; (3) the fact that magistrates' authorization is required for release of all misdemeanor defendants whom PTR has recommended for release; (4) the working relationship between PTR and the magistrates necessitated by the requirement of magistrate approval and the fact that all PTR investigators and booking magistrates are located close to one another in the booking area of the county jail; and (5) the low nonappearance and rearrest rates of those whose release was approved by PTR and those whose release was approved by magistrates without any prior investigation by PTR.

In 1973, as in 1972, it still seems to be true that about two-thirds of those released by the PTR program would have been released on unsecured bond, most likely by magistrates, had there been no PTR program. Of the remaining one-third of PTR releasees, some (about 6 percent of the total defendants) would have gone to bondsmen had PTR not been available, and the rest (about 4 percent of the total defendants) would probably not have been released at all without PTR.¹⁵

The Table 3 figures suggest that in 1973, just as in 1972, the defendants released by PTR who probably would not have been released at all before the PTR program began were predominantly black and low income persons.¹⁶ Nevertheless, low income defendants in 1973 continued, as in 1972, to prefer bondsmen to PTR; 44.8 percent were released by bondsmen, as compared with 27.8 percent by PTR. This fact does not seem to be explained by seriousness of the low income defendants' charges or their employment status, because -- perhaps surprisingly -- employment status and the nature of the charge (felony or misdemeanor) are not strongly related to income as defined here. I have no explanation for the greater proportion of low income defendants using bondsmen. Perhaps low income defendants are more timid about undergoing PTR's prerelease investigation, or culturally more familiar with professional bondsmen, than high income defendants.

Bondsmen have been losing ground steadily from 1971 to 1973, having gone from a 55.6 percent "share" of released defendants in 1971 to 41.4 percent share in 1973. Most of this loss of clients is probably due, directly or indirectly, to PTR. Of the 7-percentage point decrease in the bondsmen's "share" from 1971 to 1972, 4 points were probably direct losses to the PTR program and 3 points to cash bond and "own recognizance", and of the 7-point decrease from 1972 to 1973, probably about 2 points were lost due to PTR and the remaining 5 points to cash

bond and "own recognizance."

The bondsmen's loss of clients to cash bond and "own recognizance" is probably at least partly due to PTR's influence. Cash bond has been steadily increasing in frequency from 1971 to 1973, as the Table 1 figures indicate. One likely reason for the increase is that PTR investigators routinely inform defendants of the possibility of obtaining release by posting the full amount of the bond in cash. Also, the PTR program is allowed to supervise "recognized" defendants when asked to by the releasing judge; the availability of this supervision may have encouraged judges to make use of "own recognizance" more often.

Another trend from 1971 to 1973 is the reduction in the use of unsecured appearance bond without PTR involvement. As mentioned earlier, the reason for this is the implicit decision on the part of officials in Mecklenburg County to let the PTR program release defendants who formerly would have been released on unsecured bond by magistrates. In fact, the magistrates were directed by the clerk of superior court on July 26, 1972, to cease releasing any defendants who were eligible for PTR release. Nevertheless, the use of unsecured bond without PTR involvement ("NPU release") persists, and is still relatively successful. The nonappearance rate of defendants on NPU release was about 10 percent in 1973 -- the average for all defendants and considerably better than the 16 percent rate of bondsman releasees. The 1973 rearrest rate for NPU releasees was quite low (2.4 percent), lower than that for any other form of bail. The very low rearrest rate may be partly due to the fact that in 1973 there was more delay, on the average, in releasing defendants on unsecured bond than on other forms of bail, and therefore a lower average period "at risk". In 1973, release by magistrates acting on their own decreased

as compared with 1971 and 1972. The use of NPU release by judges evidently continued at about the same frequency as before. Therefore, in 1973, NPU release became more frequently used at the trial or preliminary hearing stage by judges rather than by magistrates immediately following arrest, and tended to involve more delay from arrest to release than formerly.

About one-fourth of those released on unsecured bond without PTR involvement in the 1973 data were released by judges or by magistrates at the request of a judge; almost all of these releasees were charged with felonies and half were charged with drug felonies. (The latter charge normally makes a defendant ineligible for PTR release, although exceptions are sometimes made.) The remaining three-fourths of the NPU releasees were released by magistrates acting on their own. Of the magistrate releasees, almost all were charged with misdemeanors of which passing a worthless check, common law assault, and domestic nonsupport were the most common.¹⁷ NPU release by magistrates now serves mainly as a supplement to PTR. For example, magistrates may release misdemeanor defendants without PTR involvement when defendants who are otherwise good risks (according to the December 1970 guidelines) but live just outside Mecklenburg County and are therefore ineligible for PTR.

When noting the considerable achievements of the PTR program in selecting low-risk defendants and in postrelease supervision, we should not forget that the magistrates have in the past also shown themselves able -- given proper guidelines -- to select substantial numbers of low-risk defendants for release on unsecured bond. In Table 2, the magistrates' nonappearance and rearrest rates for 1971 and 1972 compare very well with those of PTR. This is one reason why it may be advisable to include

magistrates in any expansion of bail opportunity in North Carolina.

Another reason is the need for continuity. Bail reform programs, like PTR, are often federally funded; when the federal funds are discontinued, the state or local government may be unwilling to assume the full cost of continuing the service. If magistrates -- and perhaps also other criminal justice officials such as Sheriff's Department personnel or probation officers -- can be included in, and trained by, a federal bail reform program, they can continue to provide defendants with a means of release after the federal funds end.

III. Analysis of the 1973 Data

This section will deal with factors affecting nonappearance, rearrest while on bail, and bail opportunity as reflected in the 1973 data.

A. Factors Affecting Failure to Appear

The factors most strongly related to failure to appear are type of release, court disposition time, the defendant's criminal history, whether or not the defendant has a local residence, and (to a much lesser extent) the defendant's income. Of these, as we will see, the most important are type of release (here, only PTR and bondsman release will be considered) and court disposition time.

Let us look first at disposition time (days from arrest to court disposition of the defendant's case) and its interaction with criminal history (here defined in terms of prior arrests). Table 5 below shows the effect of these factors on nonappearance without controlling for type of release. The percentage figures indicate the fraction of each sampled category of defendants who failed to appear [the sample sizes are shown in parentheses in this and all subsequent tables]. Criminal history seems to matter very little when the defendant's case takes no more than 30 days to dispose of, but does matter significantly when the disposition time is longer. The increase in the nonappearance rate when the disposition time moves past 60 days is quite startling, but here too, the contribution of criminal history is significant.

Table 5. Fraction of Released Defendants
Who Fail to Appear, by Disposition
Time and Criminal History
[Includes All Forms of Release]*

<u>Disposition Time Days</u>	<u>One or Zero Prior Arrests</u>	<u>Two or More Prior Arrests</u>
0-30	1.7% (201)	0.7% (99)
31-60	2.3% (176)	9.5% (84)
Over 60	22.6% (137)	35.0% (94)

*Figures in parentheses in Tables 5-16 are the estimated ("de-weighted") sizes of the samples from which the indicated percentages came.

Now let us see how PTR and bondsman releasees compare when criminal history and disposition time are controlled for (see Table 6 below). Although the nonappearance rate of bondsmen's clients is fairly low when the disposition time does not exceed 60 days (5.2 percent for all such clients), it is quite high for longer disposition times, and, as we would expect, it is also affected by criminal history. The PTR defendants' rate is much lower than the bondsman releasees' rate in all but one category (0 to 30 days, two or more prior arrests); in fact, it is zero except when the disposition time exceeds 60 days. In the latter situation, the PTR defendant's having two or more prior arrests on his record seems to double his chance of nonappearance, although the sample size (12) is too small to permit much confidence in the estimated rate of 13.5 percent for that category.

Table 6. Fraction of Defendants Who
Fail to Appear by Disposition
Time, Criminal History,
and Type of Release

Disposition Time (Days)	<u>One or Zero Prior Arrests</u>		<u>Two or More Prior Arrests</u>	
	<u>PTR</u>	<u>Bondsman</u>	<u>PTR</u>	<u>Bondsman</u>
0-30	0.0% (92)	6.0% (55)	0.0% (32)	1.3% (51)
31-60	0.0% (63)	4.3% (70)	0.0% (22)	9.8% (48)
Over 60	6.3% (32)	30.5% (75)	13.5% (12)	39.8% (57)

Two other factors -- the defendant's income and whether or not he has a Charlotte address -- interact with criminal history in their relationship to the released defendant's chance of failing to appear in court. In Table 7, when criminal history is controlled¹⁸, the defendant's chance of nonappearance is lowest if his income is in the "high" category, higher if it is in the "low" category, and higher still if he has no Charlotte residence. All of the nonappearance rates for these income and residence categories are much higher for defendants with two or more prior arrests, but the ranking remains the same. (Some of the comparisons of rates in Table 7 did not prove to be statistically significant.¹⁹)

The data suggest that having a local residence has the same strong effect on the chance of nonappearance as having a record of two or more arrests and that the effect of income is considerably weaker than that of prior arrests and local residence.

Table 7. Fraction of Released Defendants who
Fail to Appear, by Income,
Charlotte Residence, and Criminal History
[Includes All Forms of Release]

<u>Income/Residence</u>	<u>One or Zero Prior Arrests</u>	<u>Two or More Prior Arrests</u>
High income Charlotte address	4.3% (215)	13.4% (107)
Low income, Charlotte address	9.3% (241)	15.9% (164)
Unknown income, <u>no</u> Charlotte address	11.4% (59)	28.6% (7)*

*Percentage accurate based on weighted sample, but sample size too small for reliable percentage.

When the two forms of release are compared along with income and local residence (Table 8), the PTR releasees are shown to have much lower nonappearance rates than the bondsman releasees in all categories except the two whose sample sizes are too small for reliable percentages.

Table 8. Fraction of Released Defendants
Who Fail to Appear, by Income,
Charlotte Residence, Criminal History,
and Type of Release

<u>Income/Residence</u>	<u>One or Zero Prior Arrests</u>		<u>Two or More Prior Arrests</u>	
	<u>PTR</u>	<u>Bondsman</u>	<u>PTR</u>	<u>Bondsman</u>
High income, Charlotte address	2.0% (85)	10.3% (60)	0.0% (32)	18.6% (53)
Low income, Charlotte address	0.4% (93)	16.1% (103)	0.0% (32)	18.7% (98)
Unknown income, <u>no</u> Charlotte address	0.0% (9)*	18.0% (38)	83.6% (2)*	0.0% (5)*

*Percentage accurate based on weighted sample, but sample size too small for reliable percentage.

Tables 9 and 10 show the failure to appear rate controlling for employment status and criminal history, and for type of release, employment status and criminal history. In Table 9, comparing the nonappearance rates of unemployed defendants with those of employed and student defendants in both prior arrest categories, no statistically significant differences are found. We must therefore tentatively conclude that employment status at the time of arrest has no relationship to nonappearance. Controlling for type of release (Table 10), we find large and significant differences between PTR and bondsman releasees in all categories of employment status and criminal history.

Table 9. Fraction of Released Defendants who Fail to Appear, by Employment Status and Criminal History [Includes All Forms of Release]

<u>Employment Status at Time of Arrest</u>	<u>One or Zero Prior Arrests</u>	<u>Two or More Prior Arrests</u>
Unemployed	8.3% (64)	22.5% (27)
Employed or Student	6.9% (340)	14.9% (193)

Table 10. Fraction of Released Defendants Who Fail to Appear, by Employment Status, Criminal History, and Type of Release

<u>Employment Status at Time of Arrest</u>	<u>One or Zero Prior Arrests</u>		<u>Two or More Prior Arrests</u>	
	PTR	Bondsman	PTR	Bondsman
Unemployed	0.0% (18)	13.3% (35)	0.0% (4)*	27.5% (13)
Employed or Student	1.3% (150)	14.7% (139)	3.1% (54)	18.6% (113)

*Percentage accurate based on weighted sample, but sample size too small for reliable percentage.

CONTINUED

1 OF 2

The above results tend to support the conclusion that the PTR program's system of release and postrelease supervision is superior to the bail bond system with regard to insuring the defendant's appearance in court, even for defendants whose characteristics, as defined in this study, make them relatively poor risks. However, this finding must be hedged somewhat. It is possible that PTR and bondsman releasees differ with respect to some unknown or inherent characteristics, not captured in the bail study, that are distinct from, or that operate in conjunction with, the characteristics that were measured in the study. For example, the PTR investigation assigns points to the defendant for length of local residence and residence with his family, neither of which presumably matters much to bondsmen in their decision to guarantee a defendant's court appearance. Neither of these factors are reflected in the study data, and it certainly seems possible that both could be important in determining the defendant's chance of nonappearance. Another example of the way in which PTR and bondsman releasees may be different is with regard to personality. Quite a few defendants, including low income defendants, choose to pay a bondsman for their release rather than to exercise their right -- of which all are routinely informed -- to be interviewed for release by PTR. Those who do choose to be interviewed by PTR may possess some personal quality that tends to make them less likely to fail to appear than those who choose professional bondsmen. Probably the safest conclusion from these data is that the very low nonappearance rate among PTR defendants is due partly to PTR's system of selection and postrelease supervision, and also may be due partly to characteristics of the PTR releasees not measured by this study.

How would defendants of the type now usually released by bondsmen perform if released by the PTR program? In my opinion, they would probably be less likely to fail to appear in court, due to postrelease supervision, but still more likely to fail to appear than those whom PTR usually releases, due to their inherent characteristics. If this opinion is correct, the nonappearance rate among PTR releasees could be expected to increase somewhat if the PTR program should in the future assume responsibility for the release of some substantial additional portion of potential bondsmen's clients.²⁰

B. How Much Nonappearance is Prevented by the
PTR Program's System of Postrelease Supervision?

In the preceding subsection, the tentative conclusion was that some of the large difference in nonappearance rate between PTR and bondsman releasees is due to PTR's system of release, which of course includes its selection system and its postrelease supervision system. It is possible to estimate how much nonappearance is prevented by postrelease supervision, as distinct from selection, if we compare defendants released on unsecured bond by magistrates (and, to a much lesser extent, judges) in 1971 before the PTR program began, with defendants released by PTR in 1973. The method of selecting releasees for release on unsecured bond based on a point score has been quite similar under the chief district judge's December 1970 guidelines for magistrates and under the rules of the PTR program, the difference being that prior criminal convictions are part of the PTR scoring system (having a negative value) but are not formally part of the magistrates' system. (This may not be an important difference in selection methods, because magistrates may often learn of defendants' criminal histories from arresting officers.

Also, the data in Table 1 establish fairly reliably that most PTR releasees would have been released by magistrates if the PTR program had not existed.) The main difference between PTR release and release by magistrates without PTR involvement has been that the former employs postrelease supervision (weekly call-ins and mailed reminders) while the latter does not. Therefore, comparing the two forms of release provides a way of isolating the effect of postrelease supervision.

In 1972, when the PTR program had begun to operate but magistrates were still releasing a good many defendants on their own without prior investigation and recommendation by PTR, the failure to appear rates of PTR and magistrate releasees (in 1971 and 1972) were not significantly different and were in the range of 2.5 to 5.8 percent (see Table 2 above). These two groups of defendants can be considered very similar for two reasons: (1) most of PTR's clients have been defendants who would have been released by magistrates in the absence of the PTR program; and (2) the economic and social characteristics of the two groups as reflected by the 1972 study data were similar (see Table 3 above). By 1973, the PTR program had acquired nearly all of the clients who formerly would have been released on unsecured bond by magistrates. The program also managed to keep its clients' nonappearance rate very low (1.4 percent). With the greater number of PTR clients in 1973, plus the continued low nonappearance rate, statistical significance can be attached to the difference in the nonappearance rate between PTR releasees in 1973 (1.4 percent) and magistrate releasees in 1971 (5.8 percent). In other words, a relationship that was not statistically significant in the earlier 1971-72 Charlotte bail study has now become so because of a larger amount of relevant data. The comparison of PTR in 1973 with

magistrates in 1971 yields the conclusion that, at least with regard to the kinds of defendants generally released by PTR and the magistrates, postrelease supervision can lower the nonappearance rate by several percentage points.

Another source of evidence of the effect of postrelease supervision on nonappearance is the finding (discussed earlier in this report) that, while a 49 percent increase from 1972 to 1973 in court disposition time for defendants released by bondsmen was largely responsible for an 8-point increase in the nonappearance rate, a 70 percent increase in disposition time for PTR releasees had no effect at all on nonappearance. Here again, postrelease supervision seems to have kept the nonappearance rate several points lower than it would otherwise have been.

Although I have no support for this assertion in the bail study data, I suspect that the effect of postrelease supervision would be greater for higher-risk defendants than those currently released by PTR. We have seen that, with regard to the groups of defendants formerly released by magistrates -- a low-risk group to begin with, in terms of failure to appear --, postrelease supervision probably reduces their nonappearance rate by several percentage points. For defendants who are "inherently" more likely to fail to appear [I suspect that those currently released by bondsmen include many such defendants], postrelease supervision may reduce the likelihood of failing to appear considerably more than it does for lower-risk defendants.

C. Factors Affecting Rearrest While on Bail

The factors that have proven in the 1973 data to be related to rearrest on a new charge while on bail include disposition time, criminal history, and to a much lesser extent, income and race. In the

previous section comparing 1971, 1972, and 1973, we have already seen that the data generally support the theory that the rearrest rate increases with disposition time, although the interaction between disposition time and criminal history is somewhat complicated. It also seems to be generally true that the type of release influences the defendant's chance of rearrest much less than it does his chance of failing to appear in court.

With regard to defendants on all forms of release, Table 11 below shows that the rearrest rate is between 4 and 7 percent when disposition time does not exceed 30 days, and is not significantly different for defendants with one or zero prior arrests than for defendants with two or more prior arrests. When disposition time exceeds 30 days, the rearrest rate goes up, but much more sharply for those with two or more prior arrests. Oddly enough, once disposition time is more than 30 days, it does not seem to matter whether it is less than 60 or more than 60 days.

Table 11. Rate of Rearrest on New Charge while on Bail, Controlling for Criminal History and Disposition Time [Includes All Forms of Release]

<u>Disposition Time (Days)</u>	<u>Zero or One Prior Arrests</u>	<u>Two or More Prior Arrests</u>
0-30	4.5% (201)	7.1% (99)
31-60	8.7% (175)	21.6% (85)
Over 60	7.3% (137)	19.5% (94)
Over 30	8.1% (312)	20.5% (179)

In Table 12, type of release is added to the variables analyzed in the previous table. For defendants with zero or one prior arrests, the rearrest rate of those released by PTR increases with disposition time, but it actually decreases (although not significantly) for those released by bondsmen. I can think of no plausible explanation for this result consistent with available data. Table 12 also shows that criminal history is a factor affecting the rearrest rate significantly for both forms of bail. Controlling for criminal history, it is apparent that the rearrest rate is much greater for bondsman than for PTR releasees (13 percent versus less than 2 percent) when the disposition time is 30 days or less, but that the rates are not significantly different for bondsman and PTR releasees when the disposition time is more than 30 days.

Table 12. Rate of Rearrest on New Charge While on Bail for PTR and Bondsman Releasees, Controlling for Criminal History and Disposition Time [Includes All Forms of Release]

<u>Disposition Time (Days)</u>	<u>Zero or One Prior Arrests</u>		<u>Two or More Prior Arrests</u>	
	<u>PTR</u>	<u>Bondsman</u>	<u>PTR</u>	<u>Bondsman</u>
0-30	1.8% (92)	13.1% (55)	0.0% (32)	13.4% (51)
31-60	12.6% (62)	8.2% (70)	23.7% (22)	16.7% (47)
Over 60	7.4% (32)	8.7% (75)	20.4% (12)	23.0% (57)
[Over 30] ¹	[10.8% (94)]	[8.5% (145)]	[22.5% (34)]	[20.2% (104)]

¹For all defendants whose disposition times exceeded 30 days, without regard to prior arrests, the rearrest rates are: PTR, 13.9% (128); and bondsman, 13.4% (249).

The fact that, when court cases take more than 30 days to dispose of, the rearrest rates of PTR and bondsman releasees are virtually the same, suggests that the PTR system of release and postrelease supervision has no advantages over the bondsman system with regard to rearrest while on bail -- when court delays exceed 30 days. However, the Table 12 data provide evidence that the PTR program can keep the rearrest rate very low when court disposition time does not exceed 30 days. The effect of PTR on the rearrest rate in the first few weeks of release may be attributable to the fact that, at the prerelease interview, the PTR investigator manages to communicate concern that the defendant continue to be law-abiding if released, and perhaps also some threat of what may occur if he does not. This is an effect that could be expected to fade as time goes on. One would not expect PTR's postrelease supervision to have much effect on a defendant's chances of offending again and being arrested again. The weekly call-in and mailed reminder probably reduce the chance of failing to appear in court through forgetfulness, but do not make the PTR client any more likely than anyone else to be caught for committing a new offense and therefore do not provide a deterrent.

The conclusions reached here regarding rearrest rates for PTR and bondsman releasees have to be qualified in the same way the conclusions regarding nonappearance rates were qualified in the previous subsection. For example, it may be true that the differences between PTR and bondsman releasees when the disposition time does not exceed 30 days are due to the differences in unknown or personal characteristics of the two groups of defendants, rather than (or in addition) to differences in the two systems of release.

Table 13 displays a different combination of factors: criminal history, race, income, and Charlotte residence. As we would expect, criminal history is a very strong influence for most categories of defendants, except -- for unknown reasons -- low income black defendants. Race does not seem to be of any importance for defendants in the high income category; this is true regardless of the extent of the defendant's criminal history. With regard to low income defendants, race does seem to play a role. Among low income defendants with zero or one prior arrests, Negroes have a higher rearrest rate than non-Negroes, but among low income defendants with two or more arrests, it is non-Negroes who have the higher rate. There does not seem to be any way of accounting for this reversal of effect. With regard to defendants not having a residence in Charlotte, Table 13 is not helpful; the sample sizes for this group are too small to permit reliable percentages to be computed.

Table 13. Rate of Rearrest on New Charge While on
Bail, Controlling for Race, Income, Charlotte
Residence, and Criminal History
[Includes All Forms of Release]

<u>Race/Income/Residence</u>	<u>Zero or One Prior Arrests</u>	<u>Two or More Prior Arrests</u>
Negro - high income, Charlotte address	5.2% (46)	27.2% (21)
Negro - low income, Charlotte address	10.6% (178)	8.4% (129)
Negro - unclassified income, no Charlotte address	0.0% (10)*	0.0% (2)*
Non-Negro - high income Charlotte address	4.7% (169)	22.8% (86)
Non-Negro - low income, Charlotte address	3.3% (64)	18.4% (35)
Non-Negro - unclassified income, no Charlotte address	7.7% (49)	12.2% (5)*

*Sample sizes too small for reliable percentages.

The next table, Table 14, controls for type of release as well as criminal history, income, and race. Unfortunately, the figures do not permit a conclusive comparison of the two forms of release. With the data divided into 24 categories, many sample sizes are too small to yield reliable percentages. In the categories where sample sizes are large enough to permit a comparison (Negro low income, non-Negro high income, and non-Negro low income with zero or one prior arrests), the bondsman-released defendants have a higher rearrest rate. However, this may well be due to the generally higher disposition time for bondsman releasees, as shown in Table 4 in the previous section.

Table 14. Rate of Rearrest on New Charge While
on Bail, Controlling for Race, Income,
Charlotte Residence, Criminal History,
and Type of Release

<u>Race/Income/Residence</u>	<u>Zero or One Prior Arrests</u>		<u>Two or More Prior Arrests</u>	
	<u>PTR</u>	<u>Bondsman</u>	<u>PTR</u>	<u>Bondsman</u>
Negro - high income, Charlotte address	2.2% (30)	16.1% (10)*	17.2% (10)*	30.3% (11)
Negro - low income, Charlotte address	11.9% (75)	11.4% (73)	1.2% (28)	12.8% (75)
Negro - unclassified income, no Charlotte address	0.0% (2)*	0.0% (9)*	-- (0)*	0.0% (2)*
Non-Negro - high income, Charlotte address	3.7% (54)	8.8% (49)	24.6% (23)	23.8% (42)
Non-Negro - low income, Charlotte address	2.0% (17)	5.5% (30)	0.0% (3)*	19.0% (21)
Non-Negro - unclassified income, no Charlotte address	0.0% (7)*	11.5% (29)	0.0% (2)*	22.2% (3)*

*Sample sizes too small for reliable percentages.

D. Is the Lower Bail Opportunity of Felony Defendants Justifiable?

The fraction of felony defendants not released in any way in the 1973 data was 21.7 percent, as compared with 4.7 percent for misdemeanor defendants (Table 3, previous section). Before dealing with the question of whether this discrimination is justified, let us try to determine how it occurs. One reason is that the minimum bond amounts are higher for felonies than misdemeanors; this makes the price of freedom higher for felony defendants, because the bondsman's fee is usually a percentage of the bond amount. Another reason is that felony defendants are more likely than misdemeanor defendants to be ineligible for release by the PTR program because of the charge against them, such as a felony drug charge. (One-fourth of the total felony defendants arrested in 1972 and 1973 in Charlotte were charged with drug offenses.) Another factor making felony defendants more likely not to receive a sufficiently high point score to be released by PTR, and perhaps less likely to receive other forms of release, is that felony defendants are much more likely than misdemeanor defendants to be unemployed at the time of arrest [27.2 percent of felony defendants were unemployed as compared with 13.7 percent of misdemeanor defendants, not counting defendants whose employment status was unknown], and somewhat more likely to have a prior arrest history in Mecklenburg County [42.5 percent of felony defendants had two or more prior arrests, as compared with 35.3 percent of misdemeanor defendants].

For various reasons, then, felony defendants have a lower chance of being released before court disposition than misdemeanor defendants.

It is also worth noting that even if a felony defendant qualifies for PTR release on the basis of his point score, he may not be released by a magistrate, but usually must wait several hours or perhaps overnight or over a weekend for his release to be authorized by a judge when court is in session.

Is the discrimination against felony defendants with regard to bail opportunity justifiable in terms of the postrelease behavior of felony releasees? Keeping in mind that they do not necessarily apply to unreleased felony defendants, let us look at the performance figures for released felony defendants. Table 15 shows that there is no difference in nonappearance rates for released misdemeanor and felony defendants, controlling for criminal history. This comparison is actually, in a sense, somewhat favorable to felony defendants. They have a greater opportunity than misdemeanor defendants to default on their obligation to appear in court, because their cases require more time and more court appearances to reach disposition than those of misdemeanor defendants.²¹

Table 15. Fraction of Defendants Who Fail to
Appear in Court, by Criminal History and
Seriousness of Charge [Includes All Forms of Release]

<u>Seriousness of Charge</u>	<u>Zero or One Prior Arrests</u>	<u>Two or More Prior Arrests</u>
Misdemeanor	7.5% (457)	15.0% (242)
Felony	8.3% (58)	16.3% (36)

Comparing misdemeanor and felony defendants with respect to rearrest rate, Table 16 indicates no difference, even though felony defendants' cases take more than twice as long to dispose of, making their period "at risk" (on release) longer.

Table 16. Fraction of Defendants Rearrested on a New Charge While on Bail, by Criminal History and Seriousness of Original Charge [Includes All Forms of Release]

<u>Seriousness of Charge</u>	<u>Zero or One Prior Arrests</u>	<u>Two or More Prior Arrests</u>
Misdemeanor	6.7% (457)	15.4% (242)
Felony	7.6% (58)	17.3% (36)

If bail practices were changed to permit the release of most of the felony defendants who currently are unable to obtain release, we might expect that these defendants' nonappearance and rearrest rates would be somewhat higher than those of other released defendants with comparable criminal histories, but would not exceed them greatly. The unreleased felony defendants do not differ significantly from the released felony defendants with regard to the proportion with two or more prior arrests, which has been shown to be strongly related to nonappearance and rearrest.²² Also, there is no reason to believe that, if they were released, their court disposition time and period at risk (on release) would be greatly different from the comparable times for other felony defendants. If there is a desire on the part of local criminal justice officials to improve the bail opportunity of felony defendants, perhaps the best approach would be to release more felony defendants via the PTR program, but at the same time intensify the postrelease supervision of

these defendants, especially those with extensive arrest records. It has been shown that postrelease supervision can reduce failure to appear rates by several percentage points.

IV. SUGGESTIONS ABOUT PREDICTING NONAPPEARANCE

AND SETTING CONDITIONS OF RELEASE

Because the present bail study is retrospective, one cannot use its findings predictively with complete confidence. Certain relationships have been found in the 1971, 1972, and 1973 Charlotte data among characteristics of defendants, court disposition time, types of bail, and nonappearance and rearrest. One cannot be certain that a relationship found in these historical data will hold true for all defendants in the future, or even for all Charlotte defendants. Social and economic conditions may change, and defendants' characteristics may also change. However, most arrested defendants during the time periods covered by the Charlotte study were released. There was a good deal of variation among the defendants released, and there was a sufficient sample size for each category of factors relevant to bail so that generalizations could be made from the sample to the full population of defendants arrested during the study periods. Finally, there were samples of appreciable size reflecting all the measurable variables that were relevant, theoretically, to nonappearance and rearrest. Therefore, these data can be used to make tentative predictions -- to be checked later -- of the chance of nonappearance of defendants in Charlotte and similar North Carolina cities.²³

To use a prediction of the chance of nonappearance to deny bail to a defendant might violate due process or equal protection guarantees. Also, using a prediction of risk to deny bail -- a prediction that is tentative and may be quite inaccurate in an individual case -- seems to raise moral and ethical problems. If bail risk predictions are to be used, I suggest that they be used not to deny release but to set conditions of release.

For an illustration of how the data of this study can be utilized in the setting of release conditions, let us imagine a situation in which nearly all defendants are released after a prerelease investigation, subject to some degree of postrelease supervision. I will try to suggest the outlines of a releasing procedure similar to that of the PTR program, but modified somewhat (1) to be consistent with the findings of this study, (2) to handle most defendants who currently would be released by bondsmen, and (3) to conform to applicable law regarding criteria for release other than by bail bondsmen. This suggested procedure is meant to apply to defendants arrested for any criminal offense except traffic, fish and game, drunkenness, and vehicular offenses (but including drunken driving). The main function of the suggested releasing procedure will be to keep the defendant's chance of nonappearance acceptably low.

[There are constitutional problems with using the chance of rearrest as a criterion for setting bail conditions, but, judging by this study, what keeps nonappearance low will probably also keep rearrest low.]

In an analysis discussed earlier in the report, it was found that the most important factors related to failure to appear were type of release, disposition time, arrest record, and local (Charlotte) residence, and the data suggested that income and employment status could safely be ignored. With regard to type of release, I suggest that most defendants be released using a system like PTR's because the data indicate that such a system keeps nonappearance lower than other systems. There is no statutory problem with emphasizing this type of release, as long as the defendant is free to choose among forms of release for which he may be eligible. With regard to disposition time, the statute [G.S. 15-103.1(b)] does not specifically mention it as a criterion for setting "terms and

conditions" of release, but probably the phrase "such terms and conditions as reasonably appear to [the releasing officer] to be required to insure the appearance of the defendant" allows disposition time to be used. Regarding the use of the defendant's arrest record, the statute mentions only "convictions"; to avoid possible conflict with the statute, the defendant's record of convictions, rather than arrests, may be used. The test should be how many convictions are on the defendant's record for offenses other than traffic, fish and game, drunkenness, and vehicular offenses (except drunken driving). (This study's findings would probably not have been different if convictions had been used in place of prior arrests.) Regarding the fourth factor found important by the study, local residence, there is no problem because the statute specifically mentions "the length of [the defendant's] residence in the community". It would be more convenient to use residence in Mecklenburg County rather than residence in Charlotte as a criterion, and probably consistent with this study; also, taking length of local residence and living with the family into consideration, as the PTR prerelease investigation now does, would probably also be consistent with the study. (The statute specifically mentions "the accused's family ties".) There is one question raised by the statute. If other criteria specifically listed in the statute, such as "employment", "financial resources", and the like, are not used in a releasing system -- because this study finds them to have little or no influence on nonappearance -- is the statute violated? In my opinion, the answer is no, as long as the releasing system is a "reasonable" one [relying on this study's findings is, I suppose, "reasonable"] and conforms to the statute in other ways.

To be consistent with what was found by this study, a releasing system of the PTR type which is designed to handle most arrested defendants should assign the highest priority to court disposition time. Because disposition time is difficult to predict in an individual case, the best approach is probably to intensify postrelease supervision as time increases from the day of arrest. Whatever degree of supervision that the defendant may be subject to immediately after release should be reviewed, and perhaps increased, when his case has been pending for 30 days, and should always be increased when his case has been pending for 60 days. (The importance of the 30-day and 60-day periods should be clear from an examination of Tables 5 and 6 above.) What is meant by increasing the level of postrelease supervision? As presently used by PTR for all its releasees, postrelease supervision takes the form of periodic telephone calls to the PTR office by the defendant, a mailed reminder of each court appearance as it comes up, and a required personal appearance by the defendant at the PTR office on each court appearance day prior to going into court. If the defendant begins his release with no supervision requirement at all [see discussion below of instances where this may be appropriate], increasing the degree of supervision for him may mean requiring bi-weekly or weekly call-ins plus providing mailed reminders. If he is already subject to some degree of supervision, intensified supervision may take the form of more frequent call-ins, weekly mailed notices of the status of his case, and perhaps even conferences between the defendant and a PTR worker to maintain the defendant's resolve to come to court. The extent of intensification of supervision should depend on the amount of time that has elapsed from the defendant's arrest date and also on his record of convictions and local residence.

The extent of postrelease supervision of the defendant immediately after release can be determined based on his record of convictions (excluding traffic and drunkenness offenses, etc.) and on whether he resides in the county. Length of local residence and whether the defendant resides with his immediate family may also be considered. If desired, approval of the defendant's release by a judge rather than a magistrate can be required for defendants whose extensive conviction record indicates a high risk of nonappearance. (I would suggest that very few defendants be subjected to this requirement, and also that the present practice of requiring judge approval for felony defendants be ended; see section III (D) above.) What about the present PTR practice whereby an unsecured appearance bond amount is set for each releasee depending on the seriousness of the charge? Although the study does not indicate what contribution (if any) the unsecured bond requirement may make to reducing bail risks, I can see no particular reason to change the present practice regarding unsecured bond.

Are there some defendants who need no postrelease supervision whatever? There are many defendants who could be released without postrelease supervision at least for the first 60 days their cases are open without an unacceptable risk of nonappearance. Probably about two-thirds of those currently released by PTR -- those who would have been released by magistrates in pre-PTR days -- have a low chance of failing to appear (in the neighborhood of 5 or 6 percent) even without postrelease supervision. One way of selecting such defendants would be to permit magistrates to return to their former practice, under the December 1970 guidelines issued by the chief district court judge, of releasing defendants on unsecured bond, and give the PTR

program the responsibility for defendants the magistrates do not release and perhaps for magistrate-released defendants whose cases have been pending 60 days. (There are other reasons for including magistrates in any bail reform program, discussed in Section II(D) above.)

Questions of management and organization efficiency in bail improvement programs are beyond the scope of this study. However, one point regarding management and organization needs to be made here because the foregoing suggestions regarding release and supervision procedures are not complete without it. Centralized, uniform administration of any system of pretrial release in each judicial district seems more likely to produce fair treatment of defendants and efficiency of operation than decentralized administration. Probably the most important factors in the successful operation of the Mecklenburg PTR Program have been (1) the centralized management of the district-wide program by one manager, and (2) the personal strengths and skills of that manager. In a number of judicial districts throughout North Carolina, consideration is now being given to undertaking bail improvement programs. It seems advisable for those interested in bail improvement in those districts to consider not only ways of involving existing magisterial, probation, and sheriff's department staffs in their new programs (for reasons mentioned earlier), but also ways of administering the entire bail system as effectively as possible. State law gives primary responsibility for bail policy to the chief district judge in each district [G.S. 15-103.2]. Consideration should be given to putting bail policy into effect by placing all forms of bail and all bail system personnel under one qualified administrator supervised by the chief district judge.

FOOTNOTES

1. S. H. Clarke, Evaluation of the Bail System in Charlotte-Mecklenburg, 1971-72 (Institute of Government, Univ. of N.C. at Chapel Hill, 1973)
- 1A. The report does not include any discussion of variations in the size of the population of the county jail. It was felt that this subject, which would necessarily involve study of a variety of factors such as changes in handling of those convicted of or charged with public drunkenness, changes in court delay, and like, required an effort of a magnitude that was beyond the scope of a bail study per se. The data presented in this report (see Table 1 on p. 3) suggest that, with regard to arrested defendants other than those charged with public drunkenness, changes in the bail system during 1971-73 were not a significant factor in changes in the jail population. The fraction of arrested defendants (excluding those charged with drunkenness) who received no form of release whatever has always been fairly low, and has varied only from 12 percent to 8 percent throughout the three-year period.
2. For analysis of the law regarding bail in North Carolina, see Comment, Bail in North Carolina, 5 Wake Forest Law Review 300-14 (1969), and Note, Bail - Right to Pretrial Release When Charged with Capital Offense, 6 Wake Forest Law Review 327-36 (1970).
3. Not included in the data are defendants charged with public drunkenness, traffic and vehicular offenses (except drunken driving defendants, who are included), and fish and game offenses.
4. The disqualifying offenses, in addition to drunkenness, are: first degree murder, rape, first degree burglary, safe cracking, habitual felon, assault upon a public officer, assault with a firearm upon a law enforcement officer, kidnapping, malicious use of explosives or incendiary devices, arson, felonious narcotics, and felonious possession of barbiturates or stimulant drugs. All are very infrequent offenses except for drug felonies, which currently constitute about one-fourth of all felony arrests in Charlotte.
5. There is reason to believe that the defendant on cash bond release who fails to appear in court may be treated more leniently by the court than the nonappearing defendant on some other form of release. Failing to appear while on cash bond release may be thought of as similar to a waiver of trial in certain minor offenses, with the forfeiture of the cash bond serving as a "fine", without a capias (bench warrant) being issued. Since, in this study, failure to appear is determined according to whether a capias is issued, the failure rates given in Table 2 (see next section) may be substantially lower than the actual failure rates for defendants released on cash bond.
6. The actual sample sizes for each of the three quarter-years were: 1971, 846 out of 2578 total; 1972, 825 out of 2771; and 1973, 861 out of 2582. Each figure in the report is one of the following: (1) an estimated total subpopulation count, computed by counting each unit of actual sample data as the inverse of the sampling fraction

of the particular race and offense category it is in; (2) a percentage based on such counts; or (3) a "de-weighted" or estimated true sample size, determined by multiplying the weighted count by the actual overall sampling fraction (about one-third). The de-weighted sample sizes are often shown in parentheses, and are always used in computing significance tests (corrected Pearson chi square and Fisher's exact test) to avoid inflating the result.

7. A case is a single charge against a single defendant. The unit of data in the study is an arrest of a single defendant. One or more charges (cases) may be associated with an arrest, although for most arrests (about 85 percent), only one charge is involved.
8. As might be expected, the variables related to opportunity, failure to appear, and rearrest also interact with each other in various ways; i.e., they are intercorrelated and have effects in combination different from their effects "alone". These interaction effects will not be explored in this report with regard to bail opportunity, but will be explored with regard to failure to appear and rearrest.
9. A recent study of delinquency employs this method of determining income and supports income as a measure of socioeconomic status; see Wolfgang, Figlio, and Sellin, Delinquency in a Birth Cohort 47-52 (Univ. of Chicago, 1972)
10. Clarke, op. cit. supra n. 1, pp. 4, 17.
11. Statements made here about bondsmen's procedures are based on discussions with court clerks or (when indicated) on speculation. I have made no direct study of the way in which bondsmen conduct their business, other than the procedures they are legally required to follow.
12. Another objection to the theory (that nonappearance among bondsmen's clients increases with court disposition time) arises from the fact that from 1971 to 1972, although the median disposition time did not decrease (see Table 4), the failure to appear rate dropped from 15.5 percent to 6.8 percent. In my opinion, this decrease is adequately explained by the following developments that occurred at the end of 1971 and early in 1972; the bondsman with the largest clientele at that time, who had evidently overextended himself and had been quite lax about nonappearance, went out of business; the clerk of superior court began keeping a stricter watch over bondsmen's capitalization; and the new PTR program began to operate at full capacity and therefore to pose a threat of competition to bondsmen. Looking at all the information presented here on failure to appear, doubt still remains about the importance of court disposition time relative to other factors affecting nonappearance. The multiple regression model (see n. 23, infra) may resolve some of this doubt.
13. Controlling for criminal history (prior arrests) does not affect this result.
14. This "warning effect" is explored in more detail in Section III of this report; see Table 14 on p. 47.

15. The table I data and the considerations listed in the previous paragraph suggest that in 1972, about 17.5 of PTR's 24.9 percentage points came from among those who formerly would have been released by magistrates on unsecured bond (17.5 points being the amount "lost" by non-PTR unsecured bond release from 1971 to 1972), with the remainder coming from among those who have not been bailed at all (about 3.6 points) and from among those who otherwise would have employed bondsmen (about 3.8 points). In 1973, PTR's "share" increased to 29.4 percent of the total, with 2.0 of the 4.5 percentage point increase from the previous year probably due to the corresponding loss in the "share" of non-PTR unsecured bond release, and the remainder coming from the bondsmen's losses. This raises the total to about 19.5 percentage points for those released by PTR in 1973 who probably would have been released in pre-PTR days on unsecured bond by magistrates or judges -- about two-thirds of PTR's 1973 "share" (19.5 of 29.4 percentage points).
16. The percentage of low income defendants released by PTR, which was zero in the 1971 data before the PTR program began, was 27 percent in 1972; this is equal to the drop of 19 percent (from 24 to 5 percent) in the low income defendants' chance of being released by magistrates, plus the drop of 5 percent (from 14 to 9 percent) in the low income group's chance of not being released at all, plus the drop of 3 percent (from 58 to 55 percent) in the low income defendants' chance of being released by bondsmen. The same kind of calculation can be made for black defendants in 1971-1972. The 1973 data show that the percentages of low income defendants and of black defendants obtaining PTR release are about the same as in 1972 (34 versus 30 percent for black defendants, and 28 versus 27 percent for low income defendants).
17. It is a mystery why any defendants charged with felonies have been released by magistrates on their own. There is nothing in this study to suggest that it would be undesirable to allow magistrates to release felony defendants on their own authority; however, the actual guidelines issued by the chief district judge regarding the magistrates' use of unsecured bond have permitted the release of misdemeanor defendants only, not felony defendants. Perhaps the releasing of the felony defendants was actually at judges' request, and not by magistrates acting on what they thought to be their own authority; in the study data, releases could have been misclassified if the official records erroneously omitted mention of the judges' authorization.
18. We should remember that a defendant without a Charlotte address may have spent most of his life outside Mecklenburg County, and that the city-county arrest records used in this study may reflect his arrest history incompletely or not at all. Therefore, the comparison of "no-Charlotte-address" defendants on prior arrests probably has little meaning.

19. Statistically, the only comparisons of rates in Table 7 that are significant are those of low and high income and of high income and "no-Charlotte-address" for defendants with zero or one prior arrests, and the comparison of prior arrest categories for low income and for high income defendants.
20. It has been shown in the previous section of this report that PTR has reduced by about 18 percent the bondsmen's "share" of the total arrested defendants from 1971 to 1973. (The bondsmen's percentage of the total defendants went from 55.6 percent in 1971 to 41.4 percent in 1973. Of this 14-point decrease, about 10 points are probably attributable to PTR, and the rest to cash bond. Ten points is about 18 percent of 55.6 points.) Nevertheless, PTR has still managed to keep its nonappearance rate extremely low. This is probably to a great extent due to the fact that about two-thirds of the PTR releasees are still defendants of the sort that would have been released in pre-PTR days by the magistrates on unsecured bond. If PTR were in the future to take on, say, half of the releasees now being handled by bondsmen, we might expect the overall PTR nonappearance rate to rise somewhat.
21. For all defendants arrested in the first quarter of 1973, excluding those arrested for drunkenness, vehicular (except drunken driving), and fish and game offenses, the median disposition time was 37 days for those charged with misdemeanors and 69 days for those charged with felonies. Using 1972 data, the median number of court appearances was 2.5 for felonies and 1.0 for misdemeanors.
22. For released felony defendants in the 1973 study, the fraction with two or more prior arrests was 38.3 percent (N=94), and for unreleased felony defendants, it was 57.7 percent (N=26). Chi square corrected for continuity was 2.39, with one degree of freedom.
23. To gauge the relative importance of defendant's characteristics and other factors in determining nonappearance rates, this report has relied on crosstabular analysis, a standard sociometric technique. Multiple regression analysis may provide more insight. This technique permits all relevant factors to be examined -- with respect to their interaction with each other as well as with the dependent variable. Until recently, regression analysis has not been applicable to situations like the one studied here where the dependent variable (i.e. whether or not the defendant fails to appear) is categorical rather than continuous or scaled. Classical regression analysis assumes that the dependent variable takes on many values over some given range, such as an IQ score, and that the random variation in this variable is normally distributed. However, methods recently developed by Grizzle, Starmer, and Koch at the University of North Carolina Biostatistics Department permit the application of multiple regression techniques to data all of which are categorical, like the data of the bail study. [(See J. E. Grizzle, C. F. Starmer, and G. G. Koch, Analysis of Categorical Data by Linear Models, 25 Biometrics 489-503(1969)].

APPENDIX

Some Sections of the North Carolina

General Statutes Relating to Bail

(Current as of April 4, 1974)

15-102. Officers authorized to take bail, before imprisonment. -

Officers before whom persons charged with crime, but who have not been committed to prison by an authorized magistrate, may be brought, have power to fix and take bail as follows:

- (1) Any justice or judge of the General Court of Justice, in all cases.
- (2) Any clerk of the superior court, any justice of the peace, any chief magistrate of any incorporated city or town, or any person authorized to issue warrants of arrest, in all cases of misdemeanor, and in all cases of felony not capital.

15-103. Officers authorized to take bail, after imprisonment. -

Any justice or judge of the General Court of Justice has power to fix and take bail for persons committed to prison charged with crime in all cases; any justice of the peace, any chief magistrate of any incorporated city or town, or any person authorized to issue warrants of arrest has the same power in all cases where the punishment is not capital.

15-103.1. Release prior to trial or hearing other than on bail -

(a) Except as otherwise provided in this section, every officer authorized to fix and take bail in any situation is empowered in his discretion to release from custody, pending trial or hearing, any person charged with a noncapital felony or a misdemeanor, upon such person's own recognizance or upon the execution of an unsecured appearance bond in an amount specified by the officer.

(b) Every person in custody pending trial as a defendant in a criminal case, other than a person charged with a capital felony, may be released other than upon bail if it appears likely that he will appear

and surrender himself to the jurisdiction of the court at the proper time. The officer authorized to fix and take bail in any case may cause an investigation to be made into the background of the defendant and to require him to provide under oath a statement of his circumstances with respect to residence, employment, and family situation whereupon the officer may make a finding upon which to base the decision as to whether or not to allow the defendant's release on recognizance or unsecured appearance bond. The officer is further authorized to set such terms and conditions as reasonably appear to him to be required to insure the appearance of the defendant. In determining which conditions of release will reasonably assure appearance, the officer shall, on the basis of available information and without having to conform to the rules of evidence, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings. The officer is further empowered to cause the arrest and recommitment of the accused if he has reasonable grounds to believe that the accused is about to depart the jurisdiction or for other reason may fail to appear or if the defendant has violated any condition of release.

(c) Every person released from custody under this section who wilfully fails to appear for trial or hearing, or knowingly violates any condition of his release, shall be guilty of a misdemeanor.

(d) For the purposes of payment of expenses of extradition under the provisions of the Uniform Criminal Extradition Act every person who

becomes a fugitive from justice during a period of release under this section, other than on bail, shall be deemed a felon.

The term "officer" when used herein shall mean and include any officer or official authorized to fix and take bail under the provisions of article 10 of chapter 15 of the General Statutes of North Carolina.

Nothing in this section shall be construed as requiring any person accused to be released without bail.

15-103.2. Chief judges to issue policies.- The Chief Judge of the District Court Division of the General Court of Justice of each district shall devise and issue recommended policies which may be followed on the use of bail and the amounts thereof; the use of release on a person's own recognizance, and the use of unsecured appearance bonds and the amounts thereof.

15-104.1. Recognizances and appearance bonds conditioned upon the defendant's appearance throughout the division of the General Court of Justice.- (a) Whether or not a recognizance or appearance bond which authorizes the release of a defendant includes a condition which obligates the defendant to appear for hearing or trial from day to day and session to session until final judgment is entered in the trial divisions of the General Court of Justice, such condition shall be deemed to be included in every recognizance or appearance bond and shall be deemed to be a condition of the filing of every other type of recognizance. Within the meaning of this section, entry of judgment in the district court from which an appeal is taken shall not be considered a final judgment.

(b) A recognizance or appearance bond or other type of recognizance previously set for a defendant may be increased or decreased, modified or discharged, at any time by a judge of any court of the General Court

of Justice then having jurisdiction of the defendant.

15-105. Bail allowed on preliminary examination. - If the offense charged in the warrant be not punishable with death, the magistrate may take from the person so arrested a recognizance with sufficient sureties for his appearance at the next term of the court having jurisdiction, to be held in the county where the offense is alleged to have been committed.

END

7. 11. 1944