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PRETRIAL RELEASE AND MISCONDUCT IN THE DISTRICT OF COLUMBIA

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EXECUTIVE SUMMARY

This study describes statistically the operation of the pretrial release system in the District of Columbia. Chapter I describes the unique legislative environment that makes the District an especially interesting setting in which to study pretrial release. Chapter II presents descriptive statistics on the setting of pretrial release conditions, the ability of defendants to satisfy those conditions, and the occurrence of pretrial rearrest or failure to appear for trial. Chapter III summarizes the results of statistical estimation of a behavioral model of pretrial release and misconduct. Finally, Chapter IV draws certain implications from the analysis and outlines limitations of the study and fruitful areas for further research.

Chapter I explains that nationwide reaction against the abuses of money bond and the economic discrimination inherent in financial requirements generated a bail reform movement during the 1960s that eventually involved about 200 cities. Serving as a legislative model for the rest of the country, bail reform laws enacted in 1966 instructed District of Columbia judges to release defendants on personal recognizance unless financial or other requirements were thought necessary to guarantee a particular defendant's appearance for trial. To assist the judges in making pretrial release decisions, one of the 1966 laws established

the D.C. Bail Agency, giving it the responsibility to collect and verify information on defendant's community ties, to make release recommendations to judges based on the verified information, and to supervise released defendants awaiting trial.

By 1970, concern about crime by D.C. defendants on pretrial release led Congress to attach a preventive detention provision to legislation reorganizing the District's court system. This provision permitted the U.S. Attorney's Office, in its role as public prosecutor, to request the pretrial incarceration of certain classes of defendants expected to commit additional crimes if released to await trial. Although at the time of enactment this provision was cited by some as a major weapon in the war on crime, and by others as a massive assault on the presumption of innocence, it has been used so rarely that it has fulfilled neither expectation.

While many would consider D.C. pretrial release legislation a model for the nation, the operation of the system has shown mixed results. As the bail reform laws intended, the rate of release on personal recognizance has risen--to more than twice the national average, and to the highest rate among major cities, according to national surveys.[1]

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[1] See Paul B. Wice, Freedom for Sale (Lexington, Mass.: Lexington Books, 1974) and Wayne Thomas, Bail Reform in America (Berkeley: University of California Press, 1976).

Simultaneously, as one would expect, the role of the professional bondsman has declined dramatically, although it has not disappeared.

More controversially, however, the nonuse of preventive detention in the face of rising crime rates has led to accusations that the system is doing nothing to address the problem of pretrial crime. This accusation is sometimes countered by claims that, in direct violation of the 1966 laws, judges are in fact achieving unauthorized preventive detention by means of high money bond. One response to this controversy has been passage by the House of Representatives of a bill broadening the eligibility for preventive detention and removing certain procedural requirements often cited as impediments to its use. That bill was under consideration by a Senate subcommittee at the time of this writing.

This study has attempted to fill part of the knowledge gap concerning operation of the District's controversial and legislatively unique pretrial release system. Section A of this Summary highlights some statistics describing the operation of the system. Section B provides an overview of a multivariate statistical model designed to explain the setting of pretrial release conditions, the ability of defendants to satisfy financial conditions, the occurrence of pretrial rearrest of released defendants, and the failure of defendants to appear in court as required.

A. HIGHLIGHTS OF DESCRIPTIVE STATISTICS

Chapter II describes the characteristics of D.C. defendants arrested during 1974 for felonies and serious misdemeanors, the pretrial release conditions set for them, their ability to satisfy financial conditions, and the magnitude of the problems of nonappearance and pretrial crime.

Based on statistics in Chapter II, Exhibit 1 describes the typical adult felony defendant to be a black male less than 26 years old, with nearly a 50-50 chance of being unemployed. About 86 percent of D.C. defendants live in the District or its Maryland and Virginia suburbs. Forty-three percent of D.C. defendants have been previously arrested for a property crime, 37 percent for a crime against a person. More than one defendant in six had a pending case at the time of arrest.

Other statistics in Chapter II reveal that 45 percent of the felony defendants were released on personal recognizance, and another 17 percent were released without bond to a third-party custodian. Another 29 percent were required to post a surety bond, and 7 percent were required to post a 10 percent cash bond. Preventive detention was requested for one defendant during 1974; the remaining 2 percent of defendants were assigned to special alcohol and narcotics treatment programs. Based on a sample of those held for

Race		
	White	5%
	Black	95%
Sex		
	Male	91%
	Female	9%
Age		
	18-25	54%
	26-35	25%
	36+	16%
	Unknown	5%
Employed		
	Yes	39%
	No	49%
	Unknown	12%
Residence		
	D.C.	56%
	Suburbs	30%
	Other	14%
Previously arrested for property crime		
	Yes	43%
	No	55%
	Unknown	2%
Previously arrested for crime against person		
	Yes	37%
	No	63%
Pending Case		
	Yes	17%
	No	83%

Source: PROMIS

EXHIBIT 1

Demographic Profile of Defendants
(Felony Cases - 1974)

surety bond, 45 percent eventually obtained release by posting the full amount themselves, finding a bondsman to post it, or obtaining a reduction to nonfinancial release conditions. Seventy-three percent of a sample held for cash bond eventually obtained release by posting the 10 percent deposit. Thus, about 80 percent of all D.C. felony defendants were released for at least part of the pretrial period.

Among those felony defendants who obtained pretrial release at some point, 13 percent were rearrested before their original cases were disposed. Nearly 40 percent of those rearrests led to conviction, a rate slightly higher than that for all defendants. Of the released defendants, nearly 11 percent failed to appear for at least one scheduled hearing. However, nonappearance caused a rearrest for bail violation or prevented the closing of the original case in only 4 percent of the cases involving released defendants. The latter figure is used to indicate the magnitude of willful nonappearance throughout the remainder of the report.

Thus, the descriptive statistics picture a minority of felony defendants, about one-third, facing financial conditions. They also indicate that an even smaller minority of released defendants commit pretrial crimes or fail to appear. While these statistics are consistent with the intent of the 1966 bail reform laws--to stress nonfinancial release--they do not address the issue of whether the group required to

meet financial conditions is actually a high-risk group. In the words of the founders of the Manhattan Bail Project, "determinations as to what kinds of people are good and bad risks ought to rest on something more solid than 'hunches'."[2]

The next section reviews highlights of the multivariate analysis reported in Appendix A. Using both probit and regression techniques as appropriate, this analysis investigates the questions of which released defendants present a high risk of pretrial crime or nonappearance, and whether the high-risk group is included in the subset of defendants receiving financial release conditions.

B. HIGHLIGHTS OF MULTIVARIATE ANALYSIS

To augment the statistical description discussed above, a model of behavior of the arraignment judge and of the defendant was constructed. The model consists of four equations linking the release conditions imposed, the defendant's ability to satisfy the conditions, and the incidence of pretrial crime and failure to appear, all to a set of explanatory variables. These explanatory variables represent the current crime, the likelihood of conviction, the defendant's history

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2 Charles E. Ares, Anne Rankin, Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Parole," New York University Law Review 38 (1963): 91.

of previous arrests and failures to appear, and his ties to the community. The estimation results are reported in detail in Appendix A and summarized in Chapter III.

As one might expect, the results showed generally that arrestees with extensive criminal histories tend to receive more stringent release conditions than others; defendants who exhibit stability in the form of a job or a local residence receive less stringent release conditions. The exception is that certain high-risk defendants are released without bond to community agencies that serve as third-party custodians. In accordance with the custodians' policies, these defendants are likely to be charged with violent crimes, such as homicide, sexual assault, or robbery, to have cases pending in court when arrested, to be on parole or probation when arrested, and to be unemployed.

A question frequently raised is whether the identity of the arraignment judge affects the setting of release conditions. Our results suggest an affirmative answer but indicate that judicial discretion has different effects on the separate parts of the pretrial release decision. Of the ten judges who handled the bulk of arraignments in 1974, only two differed substantially from the overall average (as indicated by significant coefficients on binary judge-identity variables) in making the financial-nonfinancial decision, and only one behaved differently in setting the amount of bond in financial

release cases. However, six of the ten took relatively independent positions on the choice between the personal recognizance and third-party forms of nonfinancial release. Five of the ten made the choice between the surety and cash forms of bond differently from the group as a whole. These results indicate overall consistency among judges, except with respect to the controversial roles of bondsmen and third-party custodians.

Data on a sample of 415 financial-release defendants were used to learn what variables influence their ability to obtain release by posting bond. As expected, and as previously found by others, a higher bond was found to discourage release. Moreover, defendants appear to make a consistent and expected distinction between cash and surety bond: holding other factors constant, defendants were more willing to post a refundable 10 percent bond with the court than to pay a nonrefundable fee of about the same size to a bondsman. Another interesting finding was that among defendants required to post surety bond, employed defendants were significantly more likely than unemployed defendants to obtain release. Whether this reflects a conscious screening process among bondsmen cannot be determined with certainty from one analysis. Nevertheless, because no similar effect was observed among cash bond defendants, one hesitates to attribute it merely to enhanced ability to pay among employed defendants.

Another objective of the behavioral analysis was to learn what variables predict failure to appear. Attempts were made to predict both willful and nonwillful failure. The results indicate that defendants charged with assault, sexual assault, or weapons offenses are somewhat more likely to appear than other defendants. Of all defendant characteristics examined, including history of prior arrests and prior failures to appear, only two appeared related to failure to appear in the current case: employed defendants were better risks than unemployed ones, and drug users were worse risks than nonusers.

Our results suggest that defendants released on cash bond or third-party custody are less likely to appear for trial than other defendants. This result held even though our statistical procedure controlled, as completely as possible given our data, for the high-risk nature of defendants released on these terms.

Our results reflect in two ways the difficulty of predicting failure to appear. First, we obtained low values of conventional goodness-of-fit statistics, such as R^2. While this indicates that our model does not contain sufficient information to predict the behavior of individual defendants, it does not imply that there is no systematic relationship between nonappearance and our explanatory variables. However, our estimated equation defined no group of defendants for whom the predicted failure probability, given release on recognizance,

exceeds 0.18. In other words, the results do not suggest it is possible, in terms of our explanatory variables, to target a "high-risk" defendant group that is far more likely than others not to appear for trial.

Contrary to conventional wisdom, defendants indicated as having local addresses did not exhibit observably better appearance records than nonlocal defendants, controlling for other relevant variables. Our results also did not support two other common assertions: that a strong likelihood of conviction or a severe possible sentence encourages failure to appear, or that a high bond discourages failure. The results concerning both local residence and high bond should be treated cautiously, however, because problems in measuring both variables may have obscured relationships that actually exist.

Our model seemed to explain pretrial crime somewhat more successfully than nonappearance. Releasees charged with felonies, especially burglary, larceny, arson, property destruction, or robbery, were systematically more likely than other defendants to be rearrested before trial. Somewhat surprisingly, defendants alleged to have carried a weapon during the offense were found less likely to be rearrested, when other variables were statistically controlled. An extensive and recent criminal history--indicated by prior arrests during the preceding year, cases pending when arrested,

prior arrests for crimes against persons, or a history of drug use--was a systematic positive predictor of pretrial rearrest. Employed defendants, white defendants, and older defendants seemed less likely to be rearrested while on pretrial release. Finally, even controlling as completely as possible for other statistically pertinent defendant characteristics, defendants released to third-party custodians seemed more likely to be rearrested than were defendants on other forms of release.

Because arrest does not imply factual guilt, the model was estimated a second time, counting only a rearrest leading to conviction as an indicator of pretrial crime. The respecification caused no major changes in the magnitudes of our estimated coefficients; however, probably because adjudication outcome is not well explained by our explanatory variables, nearly all coefficient standard errors increased. As a result, using the alternative measure, the relationships of pretrial crime to robbery, arson, and property destruction charges, to use of a weapon, to prior arrests for crimes against persons, to drug use history, to defendant's race, and to third-party custody status, became statistically insignificant at conventional levels.

The goodness-of-fit statistics indicated somewhat greater ability to describe pretrial rearrest than failure to appear within our sample, although we cannot claim power to predict

the outcome of individual cases. However, because rearrest is systematically related to several of our explanatory variables, the predicted rearrest probabilities among defendants in our sample ranged from 0.01 to 0.67, far wider than the range of predicted nonappearance probabilities: 0.02 to 0.20. Thus, we find better discriminatory power with respect to rearrest than nonappearance; validity remains an issue, however, to be resolved by similar analysis of other defendant samples.

CONTENTS

I. INTRODUCTION

A decade has passed since Herbert Packer articulated the Crime Control and Due Process Models of American criminal justice. In his words,

> the value system that underlies the Crime Control Model is based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal [justice] process.

In contrast, the Due Process Model views

> the combination of stigma and loss of liberty that is embodied in the end result of the criminal [justice] process [as] the heaviest deprivation that government can inflict on an individual.

Under the Due Process Model, the end result--punishment--ought not to occur "as long as there is an allegation of factual error that has not received an adjudicative hearing in a fact-finding context."[1]

The clash between the Crime Control and Due Process Models is perhaps more apparent in the pretrial release decision than at any other point in the criminal justice process. A recent poll[2] revealed that 92 percent of all New Yorkers "would want a judge to set bail amounts based on how dangerous the judge feels the accused may be, on how likely he or she would be to commit other crimes during the time the accused is released

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[1] Herbert L. Packer, The Limits of the Criminal Sanction (Calif.: Stanford University Press, 1968): 149-73.

[2] "Judges Rapped as Lax on Crime," New York Post, January 19, 1978: 5.

on bail" --in other words, invoke loss of liberty before any adjudicative fact-finding, with the objective of crime control.

By contrast, in a 1975 poll of public officials--judges, county executives, public defenders, district attorneys, police chiefs, and sheriffs--crime control ranked eighth on a list of 16 possible priority goals for pretrial release programs. The three goals deemed most important by this group--ensuring that released defendants appear for trial, lessening economic discrimination, and minimizing the time between arrest and release--are clearly consistent with the Due Process Model.[3]

The tension between crime control and due process has made pretrial release in the District of Columbia a subject of debate and legislation for over a dozen years. Unfortunately, the course of this activity has been directed more by opinions than by facts. Advocates of due process have decried money bail as "discrimination based on economic status," without documenting its extent;[4] this view was formally embodied in the Federal Bail Reform Act of 1966. Crime control advocates have cited celebrated cases involving persons awaiting trial in arguing for pretrial detention of dangerous defendants, without demonstrating an

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[3]Robert V. Stover and John A. Martin, Policymakers' Views Regarding Issues in the Operation and Evaluation of Pretrial Release and Diversion Programs (Denver, Colo.: National Center for State Courts, 1975).

[4]Statement of Lawrence M. Baskir in "Pretrial Release or Detention: Hearings and Markups before the Subcommittee on Judiciary and the Committee on the District of Columbia," House of Representatives, 94th Cong., 2nd sess., June-August 1976: 242.

ability to identify dangerous defendants in advance of release;[5] their view was embodied in the Crime Control Act of 1970.

Because pretrial release practices have preoccupied criminal justice reform efforts in the District of Columbia as in few other jurisdictions, the nation's capital is a particularly appropriate setting for an empirical analysis of pretrial release. This study is based on data captured during 1974 by the PROMIS system operating in the U.S. Attorney's Office for the District of Columbia. The remainder of this chapter discusses the evolution of the bail system, the pretrial release options available in the District, and the issues to be addressed in this study. Chapter II presents statistics and tabulations describing the operation of the District's pretrial release system. Chapter III summarizes a multivariate behavioral analysis, reported in detail in Appendix A, of the factors that predict what release conditions are imposed, which defendants actually obtain release, and which released defendants commit pretrial crimes or fail to appear for trial. Chapter IV reviews the highlights and implications of the study.

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[5]Statement of George Frain, ibid.: 369. The inability to predict dangerousness is documented by John Monahan, "The Prediction of Violent Criminal Behavior: A Methodological Critique and Prospectus," in Alfred Blumstein, Jacqueline Cohen, and Daniel Nagin, eds., Deterrence and Incapacitation: Estimating the Effect of Criminal Sanctions on Crime Rates (Washington, D.C.: National Academy of Sciences, 1978).

A. ORIGIN AND EVOLUTION OF BAIL

Bail as a procedure for dealing with the pretrial freedom of defendants has been noted by historians to have existed informally in England during the first thousand years A.D., but it achieved its statutory birth in 1275, as part of the Statute of Westminister I.[6] Throughout its history, bail has been legally defined as a procedure for ensuring that an individual accused of a crime will appear for his trial.

Traditionally, bail involved economic sanctions to discourage individuals from fleeing the jurisdiction rather than face adjudication and possible conviction. The judiciary was given the responsibility for implementing the various bail statutes and for determining the defendant's pretrial status. Judges have usually been aided by statutory guidelines and the arguments of the prosecution and defense, as well as their own inclinations, in arriving at a bail decision. Among the criteria commonly employed by judges are the seriousness of the charge and the defendant's past criminal record, socioeconomic background, and previous pretrial behavior.

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[6]For more detailed discussions of the legal history of bail, see the following: J.F. Stephen, A History of the Criminal Law of England (Macmillan, 1883) I: 233-43; Lester B. Orfield, Criminal Procedures from Arrest to Appeal (New York: New York University Press, 1947): 101-04; Ronald Goldfarb, Ransom (New York: Wiley Interscience, 1967): 23-25; and An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs (Denver: National Center for State Courts, 1975): 5-15.

Within the United States, the judiciary has had to turn to state statutes for guidance in setting permissible bonds in criminal cases. The only constitutional mention of bail occurs in the Eighth Amendment, which warns simply that "excessive bail shall not be required." This has resulted in two intellectual debates--first, over whether the amendment requires that bail be set in all cases, and second, over what is a reasonable definition of "excessive." The first debate has been waged in scholarly arenas, such as law review articles, and although the first Judiciary Act[7] required bail for all noncapital federal crimes, and all but seven states eventually followed suit, the question has never been totally resolved at the state level. The second debate has produced a few U.S. Supreme Court decisions, the most famous being the 1951 case of Stack v. Boyle in which Chief Justice Vinson described contemporary American bail policy.

> The right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty.... Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is "excessive" under the 8th Amendment.[8]

Several state statutes specify criteria that the judge may consider when determining the amount of bond necessary to

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[7] Judiciary Act of 1789, 1 U.S.C. 91, sec. 33.

[8] Stack v. Boyle, 342 U.S.1.

guarantee appearance. The model for most of these state statutes is Rule 46(c) of the Federal Rules of Criminal Procedure, which directs the judge to inquire into the "nature and circumstances of the offense charged, the weight of the evidence against [the defendant], the financial ability of the defendant to give bail and the character of the defendant."[9] Within this general model, two submodels have emerged: one emphasizes the seriousness of the alleged crime as the primary determinant of bail amount, and the other stresses the community ties and character of the defendant.

The latter approach, embodied in the bail reform movement of the 1960s, was a reaction to the economic discrimination implied by the existing bail system. Federal Judge J. Skelly Wright, writing in 1963, described the situation at that time in the following words:

> The effect of [the bail] system is that the professional bondsmen hold the keys to the jail in their pockets. They determine for whom they will act as surety--who in their judgment is a good risk. The bad risks in the bondsmen's judgment, and the ones who are unable to pay the bondsmen's fees, remain in jail. The court and the commissioner are relegated to the relatively unimportant chore of fixing the amount of bail [emphasis added].10

By emphasizing the defendant's character and community ties, the bail reform movement attempted to eliminate the economic discrimination described by Judge Wright by relying on an

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[9] F. R. Crim. P. 46 (c).

[10] Pannell v. United States, 320 F. 2d 698,699 (D.C. Cir. 1963) (concurring opinion).

alternative basis of inquiry--the strength of character and local ties binding the defendant to the jurisdiction. In 1961, the Vera Institute established the first bail reform project that stressed these attributes.[11] For any defendant who possessed the requisite community ties, the Manhattan Bail Project would recommend to the judge that the defendant be released on his own recognizance. Following the success of this pioneer project in obtaining the release of large numbers of defendants on their own recognizance while reducing the rate of nonappearance, nearly 200 other similar reform programs have commenced operation in cities across the country.

It was in this climate of reform that Congress enacted both the federal and D.C. bail reform acts of 1966.[12] A detailed discussion of the D.C. law is deferred to the next section; in general, the act established release on personal recognizance as the standard procedure for defendants awaiting trial, unless their appearance at trial could not be reasonably assumed. It specifically directed that potential pretrial danger to the community was not to influence the imposition of financial release conditions.

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[11]Charles Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," New York University Law Review 38 (1963).

[12]Federal Bail Reform Act of 1966, P.L. 89-465, 80 Stat. 214, and District of Columbia Bail Agency Act, P.L. 89-519, 80 Stat. 327. The District act implemented the federal act in Washington, D.C., and established the D.C. Bail Agency to operate the local pretrial release program.

Following passage of the D.C. Bail Agency Act, crime in the District of Columbia increased at an alarming rate. In retrospect, it appears that this increase was part of a national trend, rather than a result of the new law. However, perhaps because the increase in crime was so widely pervasive, the pendulum swung from the due process concerns that engendered bail reform to concerns with crime control.[13]

This swing of the pendulum caused the District of Columbia to be the first local jurisdiction in the nation to experiment with a formal preventive detention procedure. As part of the 1970 District of Columbia Court Reform Act,[14] the preventive detention provision statutorily added a new purpose to the administration of pretrial release. While ensuring appearance at trial remained the only purpose of financial bond, preventive detention was proffered as a means of protection against the defendant who posed a threat to the community. Accompanied by fairly elaborate due process procedures, the preventive detention provision defined a group of potentially

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[13]For a view of the local debate at that time, see John N. Mitchell, "Bail Reform and the Constitutionality of Pretrial Detention," Virginia Law Review 55 (1969): 1223; and Laurence H. Tribe, "An Ounce of Detention: Preventive Justice in the World of John Mitchell," Virginia Law Review 56 (1970): 371. An overview of the argument is presented in Patricia M. Wald, "The Right to Bail Revisited: A Decade of Promise Without Fulfillment," in Stuart Nagel, ed., The Rights of the Accused (Beverly Hills: Sage Publications, 1972): 189-95.

[14]District of Columbia Court Reform and Criminal Procedures Act of 1970, P.L. 91-358, 84 Stat. 473.

"dangerous" offenders who, because of their previous misconduct, would be forced to attend a hearing at which the court would determine if it was in society's interest to detain the defendant for up to 60 days to await trial. Thus, rather than choosing between the goals of crime control and due process, the D.C. Code makes it possible for the District to pursue both at once.

B. DESCRIPTION OF D.C. BAIL SYSTEM

The District of Columbia's bail system is distinguished by three features that make it especially interesting as a setting for a study of pretrial release. First, it operates within an extremely complex criminal justice system. Depending on such factors as the location of the offense, the time of day of the arrest, and the nature of the charge, a given defendant may be identified and booked by either the Metropolitan Police Department or the Federal Bureau of Investigation, and held pending arraignment in either local or federal custody. He may be prosecuted by either the D.C. Corporation Counsel or the U.S. Attorney; if the latter, arraignment may take place in either the D.C. Superior Court or the Federal District Court. In such a fragmented environment, it is an onerous task to gather and verify information about a defendant's identity, his custody status, his pending cases in both the D.C. courts and in suburban jurisdictions in Maryland and Virginia, his prior criminal record, and other information legally pertinent to the pretrial release decision.

Second, and most important, the D.C. Bail Agency plays a critical role in the pretrial operation of the District's criminal court system. The Bail Agency has responsibility for monitoring the behavior of the defendants who receive nonfinancial release, as well as those who obtain release by satisfying financial conditions. The D.C. Code instructs judges to release on their own recognizance all defendants who seem likely to appear in court. In addition, if the judge has reservations about the defendant's likelihood of appearance, he may resort to any of the following conditions, either separately or in combination:

> (1) Place the person in custody of a designated person or organization agreeing to supervise him.
>
> (2) Place restrictions on travel, association, or place of abode of the person during the period of release.
>
> (3) Require the payment of a bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 percentum of the amount of bond, such deposit to be returned upon the performance of the conditions of release.
>
> (4) Require the execution of a bail bond with sufficient solvent sureties or the deposit of cash instead.
>
> (5) Impose any other condition, including a condition requiring that the person return to custody after specified hours of release for employment or other limited purposes.15

The judge's decision is guided not only by the law but by recommendations of the D.C. Bail Agency, which are based on information collected in defendant interviews and verified by agency staff.

The third distinguishing feature is the preventive

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[15] 23 D.C. Code 1321.

detention provision of the 1970 D.C. Court Reform Act. Despite the great controversy this provision initially stirred, it has been used infrequently; in fact, following a brief four-month period in which it was formally used approximately 20 times and caused 10 defendants to be preventively detained,[16] the provision was virtually not invoked for the next four years. Chapter II includes tabulations showing increased use of preventive detention since 1976.

The reason frequently suggested for the rare use and present dormant status of the preventive detention provision is the range of procedural guarantees, which proved to be a critical addition to an already overworked and understaffed court system. The increase in manpower, time, and space necessary to administer the pretrial detention hearings has made these hearings impractical in all but a few cases, according to the U.S. Attorney for the District of Columbia, Earl J. Silbert.[17] Public officials interviewed by one of the authors have estimated that if preventive detention hearings were to be requested in all cases permitted under law, a minimum of two courtrooms would have to be added and made available

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[16] Nan C. Bases and William F. McDonald, Preventive Detention in the District of Columbia: The First Ten Months (Georgetown Institute of Criminal Law and Procedure and Vera Institute of Justice, 1972): 46.

[17] Earl J. Silbert, "Pre-Trial Detention: Trying to Find a Common Sense Solution," The Washington Post, April 8, 1976: Md. 2.

16 hours a day, plus one to two full-time judicial officers to supervise those hearings, four to five additional U.S. attorneys, and an annex constructed to the present city jail to house the increased numbers of detained defendants, since the present facilities are filled to capacity. According to estimates by researchers at Georgetown University's Institute of Criminal Law and Procedure who examined the first year of operation of preventive detention in the District, approximately 33 percent of all arrested defendants would qualify for preventive detention.[18]

To complete this description of the operation of the D.C. bail system, the various options available for pretrial release of the defendant are briefly discussed below.[19] The first two do not involve a judicial officer.

Citation release--Defendants arrested for any misdemeanor are eligible for citation release at the police station. The arresting police officer obtains a recommendation from the Bail Agency, based on the results of its interview and verification procedure. In practice, citations are used primarily for less serious misdemeanors, such as drugs, larceny, and commercial sex. Approximately 80 percent of those defendants eligible, about 4,000 per year, are granted this form of release. These

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[18]Bases and McDonald, Preventive Detention in the District of Columbia: 61.

[19]Much of the following summary is based on J. Daniel Welsh and Deborah Viets, The Pretrial Offender in the District of Columbia (Washington, D.C.: D.C. Bail Agency and D.C. Office of Criminal Justice Plans and Analysis, 1977): 87-97.

defendants do not appear in court until trial.

Stationhouse bond--Immediately following arrest and booking, defendants can be released immediately by posting bond through a willing bondsman. The amount of bond is listed on a fixed schedule, previously set by the court according to the offense. The defendant remains free at least until arraignment the next day, when a judge formally imposes release conditions.

At arraignment, the judge formally imposes one of the following pretrial release conditions.

Personal recognizance--Based on an evaluation of the defendant by both the Bail Agency and the judge, release may be based on only a personal promise to appear without any monetary conditions. For a large percentage of defendants, personal recognizance is accompanied by an agreement to abide by certain conditions, such as periodic reporting to the Bail Agency, living at a specified address, or treatment at a drug facility. In 1974, approximately 60 percent of all defendants whose cases were accepted for prosecution in Superior Court, and for whom release conditions are known, were given some form of personal recognizance release.

Financial bond (cash or surety)--A remnant of the traditional system, approximately 25 percent of all defendants receive financial conditions. Three-quarters of these defendants are required by the arraignment judge to post either a secured bond or cash for the full amount (so-called "surety bond"); most of them use a bondsman. The remaining quarter

are required to post only 10 percent of the bail amount; they usually raise the money themselves through friends or personal savings (so-called "cash bond"). In either case, the amount deposited is returned to the defendant following appearance, except for a nominal charge for administering the program.

Third-party release--In 1975, the Office of Criminal Justice Plans and Analysis and the D.C. Bail Agency found that approximately 18 percent of all misdemeanants and felons were granted third-party release. In the following year (1976), special tabulations by INSLAW revealed that this percentage of third-party releases had dropped to 12 percent. Third-party release is a form of nonfinancial pretrial freedom that places the defendant under the direct supervision of an organization or designated person. Not only must third-party custodians ensure the defendant's appearance in court, but they must also apprise the Bail Agency of any violations of conditions set by the court. In recent years, a few Washington organizations interested in the problems of drug addiction have been active in serving as third-party custodians. The community organizations see their role as obtaining nonfinancial release for poor, high-risk defendants.

Miscellaneous--Nearly 2 percent of the defendants have their pretrial status determined in one of the following ways: referred to the Rehabilitation Center for Alcoholics; committed to St. Elizabeth's Hospital for mental observation; placed on five-day hold if on probation or parole while the parole board considers possible revocation; held under the preventive detention

statute; returned voluntarily to another state; or held without bail if they satisfy the conditions for preventive detention.

C. ISSUES RELATED TO BAIL

This section identifies the major issues related to the administration of bail that will be examined in this report.[20] These issues are of particular significance to the District of Columbia system, although most are of importance to all jurisdictions. The problems discussed within this section result from the conflict between two principles that underlie the operation of the pretrial release system. First, the system treats persons who have been merely accused of crimes, with the possible results of economic discrimination and loss of freedom prior to the determination of guilt or innocence. Second, there is strong community pressure to use the system to control pretrial misconduct. Let us now turn to some specific issues and carefully note their relevance to the District's pretrial system.

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[20] At least four important pretrial release issues are beyond the scope of this report. These are: (1) the effect of pretrial incarceration status on the likelihood of conviction at trial and conviction by plea; (2) the effect of pretrial incarceration on the sentencing of convicted defendants; (3) the question whether defendants incarcerated before trial are, or should be, given scheduling priority to minimize the pretrial incarceration period; (4) the relationship of case processing time to the probability of pretrial misconduct.

The first three issues are not addressed here because they are covered in other PROMIS Research reports, as well as other sources. Methodological and data problems prevented us from adequately studying the fourth. An amplified discussion of these issues appears in Chapter IV.

1. Purposes of Bail

Two possible purposes of a pretrial release system have already been discussed with respect to the District of Columbia: ensuring the defendant's appearance for trial, and incapacitation to protect the community from pretrial crime. A third, sub rosa purpose, giving the defendant a "taste of jail," has been cited by several researchers in various cities other than the District of Columbia.[21] The objective is achieved, of course, when bond is set beyond the defendant's financial reach.

As with sentencing, the purpose of the "taste of jail" is difficult to discern and probably varies from case to case. For a hard-core repeat offender under arrest based on inconclusive evidence, some might consider pretrial incarceration to serve the purpose of providing "just deserts" that are not expected to follow from adjudication.[22] In the case of a youthful or first offender, some might argue that the ends of rehabilitation

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[21] See, for example, Caleb Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia," University of Pennsylvania Law Review 102 (1954): 1031-1079; Caleb Foote, "The Administration of Bail in New York City," University of Pennsylvania Law Review 106 (1958): 693-730; Daniel J. Freed and Patricia Wald, Bail in the United States: 1964 (Washington, D.C.: U.S. Department of Justice and Vera Foundation, Inc., 1964); Paul B. Wice, Freedom for Sale (Lexington, Mass: Lexington Books, 1974): 7; and Frederic Suffet, "Bail Setting: A Study of Courtroom Interaction," reprinted in George F. Cole, ed., Criminal Justice: Law and Politics, (North Scituate, Mass: Duxburg Press, 1972): 309.

[22] See Packer, The Limits of the Criminal Sanction: 214, for a discussion of this purpose in the context of the Crime Control Model. See Andrew von Hirsch, Doing Justice (New York: Hill and Wang, 1976) for a discussion of the concept of "just deserts."

or special deterrence are served if the harshness of jail intimidates him into following more law-abiding paths upon release. In fact, Packer's Crime Control Model argues that judicial leniency in suspending the sentences of first offenders makes pretrial incarceration "not only a useful reminder that crime does not pay but also the only such reminder they are likely to get."[23]

Although purposeful use of bond to give a "taste of jail" is illegal and has not been documented in the District of Columbia, incarceration frequently occurs as a result of bond imposition rather than a legal finding of guilt. Among D.C. cases accepted for prosecution as felonies during 1974, Hausner and Seidel report a 41 percent preindictment dismissal rate for defendants held on bond, only 5 percent below the rate for all defendants.[24] For these 41 percent, it was apparent early that their only possible exposure to a "taste of jail" would precede adjudication.

In Chapter III and Appendix A, an attempt is made to infer the purposes of pretrial release in the District of Columbia. Multivariate analysis is used to learn what factors influence the setting of pretrial release conditions, the likelihood of pretrial rearrest, and the likelihood of

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[23]Packer, ibid.: 212.

[24]Jack Hausner and Michael Seidel, An Analysis of Case Processing Time in the District of Columbia Superior Court, PROMIS Research Publication no. 15 (INSLAW, forthcoming): Exhibit 2.10, p. II-24.

nonappearance for trial. By comparing the factors that determine all three outcomes, an attempt is made to infer the arraignment judges' objectives.

2. Judicial Disparity in the Release Decision

As was indicated previously, the District of Columbia judge has many pretrial release options available to him. The range of alternatives parallels a range of perceptions the judge may possess concerning the defendant. At one end of the spectrum is the personal recognizance release, used if the judge feels positively about the stability of the defendant's community ties and intends to reward him with unconditional release. At the other extreme is surety bond, which the judge can set at an extremely high amount. Although such bonds cannot be "excessive," the vagueness of this statutory prohibition, plus the willingness of appellate courts to curtail only the most serious abuses of the lower court judge's discretionary powers, means that the judge has great freedom in imposing sizable bonds.[25] Those defendants who fall within the middle of this continuum are typically either released into third-party custody, under a small cash or surety bond, or on their own recognizance but with a set of conditions controlling

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[25]The judge's freedom in defining "excessive" is implicit in the following guidance: "Bail must not be set in a prohibitory amount, more than the accused can reasonably be expected under the circumstances to give.... However, a mere inability to procure bail in a certain amount does not make such amount excessive." 6 Corpus Juris (1916): 989.

their pretrial freedom (i.e., reporting to the Bail Agency on a regular basis, returning to school, or avoiding certain parts of the city).

The judge's selection of conditions from the wide range available to him reflects not only his perception of the defendant, but also the subjective weights he places on the competing potential objectives of pretrial release, and his expectations about the effectiveness of a particular condition in achieving a particular objective. To make the point more concretely, consider a hypothetical experiment in which two judges are given the same information about Defendant X and are asked, independently, what release conditions are appropriate. Their selection of conditions may differ for at least the following reasons:

- Different perceptions of the defendant. The judges may agree on objectives but make different subjective estimates of Defendant X's innate propensity to flee (or commit crimes on release).

- Different objectives for the decision. The judges may agree that Defendant X is unlikely to flee and likely to commit crimes if released, but disagree as to whether prevention of the crimes is an admissible objective of the conditions.

- Different expected effects of conditions. The judges may agree that Defendant X does not merit release, but disagree on the amount necessary to prevent his release.

These individual differences introduce what some call "judicial discretion" and others call "arbitrariness" into the pretrial release decision. In Chapter II, this variation is

analyzed by comparing the release decisions of the ten judges who participated most heavily in D.C. Superior Court release decisions during 1974. In Chapter III and Appendix A, multivariate techniques are used to compare the relative importance of judicial discretion and case characteristics in determining release conditions.

3. Prediction of Pretrial Misconduct

We have discussed the setting of release conditions as a goal-oriented decision and alluded to two commonly perceived goals of the decision: preventing nonappearance and preventing pretrial crime. We have also discussed how, even under unanimous agreement concerning the proper goal of pretrial release, interpersonal differences in judges' perceptions would cause different judges to impose different conditions in identical circumstances.

Similarly, unobservable differences guarantee that even among a group of seemingly identical defendants, identical release conditions will not produce identical pretrial behavior. Otherwise, judicious setting of conditions could totally eliminate pretrial misconduct without unnecessarily detaining a single defendant before trial. At the other extreme, if defendant behavior were completely random, discussion of "goals" for pretrial release would make no logical sense. Like other students of pretrial release, we assume that reality lies between those extremes, i.e., that defendant behavior consists of both systematic and random (or at least unobservable) components. The success of judges, bail reform agencies, prosecutors, and others

in achieving either of the widely accepted goals of pretrial release depends crucially on both the relative importance of the two components in determining behavior and the extent to which decision makers understand the systematic component. This need for understanding is especially apparent with respect to three areas of concern to the bail reform movement: economic discrimination, judicial and community acceptance of bail reform agency recommendations, and the cost-effectiveness of bail reform.

The problem of discrimination involves the question of exactly whom bail reform programs are designed to serve. Are they designed primarily to aid indigent defendants who find it difficult either to satisfy the criteria defining community ties or to pay for their release? Or are they set up to serve the middle-class defendant who more likely meets the criteria but who more probably has sufficient savings to pay a bondsman or the court for his release? Most reform programs have not confronted this difficult question and simply recommend release for whomever meets their requirements. Unless systematic relationships can be demonstrated between the release criteria and the incidence of pretrial misconduct, the criteria may be legitimately attacked as an imposition of bail reformers' values on the defendant population.

A second issue concerns the relationship between the judge and the bail reform agency. In Washington, as in most other cities utilizing bail reform programs, the judge may either accept or reject the bail agency's recommendation. His treatment

of the recommendation seems dependent upon how critically he views the bail agency and, conversely, the extent to which the bail agency concerns itself with the reaction of the judges to its recommendations. A recent report by the Vera Institute of Justice [26] pondered the question whether the objectives of its recommendations should be modified to increase the judicial acceptance ratio. However, it did not address the possibility that additional statistical verification that its criteria support its objectives might also increase the acceptance rate.

The third area of concern is the cost-effectiveness of bail reform. Although many believe that the goals of bail reform are justifiable on grounds of equity, the fiscal problems of the crime-plagued major cities have made cost-effectiveness a consideration in evaluating any social program. As it happens, studies have generally found bail reform projects to be cost-effective. Lee Friedman has estimated that the average cost per release under the Manhattan Bail Project was about $70, including administrative and start-up costs, compared with a detention cost of about $180 per defendant; the trade-off is cost-effective, even without considering the social benefits of increased pretrial freedom and decreased pretrial misconduct. The San Francisco Commission on Crime has estimated that that city's bail agency was saving a minimum of $330,000 per year in recurring costs and had enabled the city to avoid construction of a new

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[26] Vera Institute of Justice, Further Work in Criminal Justice Reform (New York, 1977): 21-25.

jail, at a cost of millions.[27] A multijurisdictional evaluation of the pretrial release components of community-based corrections programs estimated that under certain assumptions pretrial release of felons through the programs saved as much as $400 in detention cost per defendant, over and above the cost of additional pretrial misconduct. While this savings was approximately offset by unusually high administrative costs for this program, the pretrial earnings of released defendants were thought to have made the programs cost effective.[28]

Even though existing bail reform projects are generally considered cost-effective, and even though saving money is not their objective, greater cost-effectiveness would presumably make them less vulnerable to political opposition. Given the high cost of collecting and verifying data about defendants, one means of improving cost-effectiveness is to devote data collection expenditures toward the information that best discriminates between high-risk and low-risk defendants. Thus, cost-effectiveness, like the concerns of discrimination and judicial acceptance, is in part a matter of understanding the systematic relationships between defendant characteristics and the incidence of pretrial misconduct.

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[27]Lee S. Friedman, "The Evolution of a Bail Reform," Policy Sciences 7 (1976): 292 and 310-311. See also San Francisco Commission on Crime, "A Report on the Criminal Courts of San Francisco: Part II, Bail/ROR Release," February 10, 1971, p. 24.

[28]William M. Rhodes, Thomas Blomberg, and Steven T. Seitz, "The Costs and Benefits of Community Based Corrections," unpublished manuscript, 1977, available from the Institute for Law and Social Research, Washington, D.C.

Before proceeding further, it is important to explain just what is meant by "pretrial misconduct" in this study. The violation of release conditions set by the arraignment judge is probably the most common and least enforced type of pretrial misconduct. The conditions may range from simply staying out of certain parts of the city to maintaining regular employment. The D.C. Bail Agency is given responsibility for enforcing these conditions but candidly admits that it is a virtually impossible task, especially given the agency's other responsibilities. Unless someone, such as a member of the defendant's family or an employer notifies the Bail Agency that a condition of release has been violated, supervision over the defendant's adherence to his conditions is virtually nonexistent.[29] Since data on the violation of release conditions were not available to us, this type of misconduct is not considered in this study.

The next category of pretrial misconduct is the defendant's failure to appear. These failures may be either "willful," that is, the defendant purposely chooses not to appear, or "nonwillful," that is, the defendant simply forgets about his required appearance or does not receive adequate notification. By not counting a nonappearance until several days have passed, some researchers have implicitly assumed that the involuntary forfeitures would have been subsequently notified and only the willful "skippers" would remain. For example, Wayne Thomas did

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29 Interview with officer of the D.C. Bail Agency, 1977.

not consider a defendant to have forfeited until eight days had passed. Using this criterion, he found that in Washington, D.C., 12 percent of cash bail defendants failed to appear compared with 7 percent of the defendants released on recognizance.[30]

While Thomas's work is useful in pointing out that purposeful behavior causes only a subset of all nonappearance, his estimates are dependent on arbitrary choice of the eight-day period. To avoid this problem, this study makes use of the D.C. Code to construct an alternative definition. Because receipt of a notice to appear is defined to be prima facie evidence that an absent defendant violated the Bail Reform Act by willfully failing to appear, we define willful failure as the issuance of a bench warrant, followed by either rearrest for violation of the act or failure to close the initial case.

The real importance of nonappearance, willful or otherwise, is an issue for policymakers, not researchers, to decide. It is believed by some that in the District, as in most other cities, the effectiveness of bench warrants is questionable and that few of the forfeited bonds are recovered, especially from defendants who leave the jurisdiction. With two states bordering the District, the ease of confounding authorities is obvious. Given the expense of such retrieval efforts, it is doubtful that the authorities are going to become alarmed over nonappearance until the problem depicted by the media

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[30]Wayne Thomas, Bail Reform in America (Berkeley: University of California Press, 1976): 103.

as reaching crisis proportions. One frustrated individual who attempts to serve these warrants for failure to appear offered the following comment (only half in jest), which seems to reflect the resigned nature of many officials on this issue:

> Look, if a defendant skips town only three things can happen and all are good. One, he is successful and flees to another jurisdiction and so he becomes someone else's problem. Two, if he remains in town he may be rearrested so you'll have some additional charges to use against him in the plea bargaining session, and third if he says in town and doesn't get rearrested you've probably rehabilitated him by intimidation.[31]

This comment minimizes the importance of the third and, to many minds, most serious type of pretrial misconduct: committing additional crimes. For obvious reasons, no data were available on crimes committed by released defendants awaiting trial. Therefore, the analysis of pretrial crime is carried out in duplicate, using two alternative proxies. The first proxy is rearrest for an offense other than Bail Reform Act violation during the pretrial release period. Since only about 32 percent of all arrests of persons on conditional release lead to conviction,[32] and since one expects that some of the remaining 68 percent are both legally and factually innocent, this proxy may lead to an overstatement of the incidence

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[31] Wice, Freedom for Sale: 162.

[32] This estimate, based on a tabulation of 1976 PROMIS data, compares with a 28 percent conviction rate overall. The lower overall rate suggests that the plea-bargaining leverage alluded to above may exist, but is inconsistent with a common allegation that police harass defendants who are on pretrial release.

of pretrial crime.[33] The second proxy is pretrial rearrest followed by conviction for another offense; if some of the legally innocent 68 percent are factually guilty, this measure yields an understatement of the incidence of pretrial crime. Previewing the actual results, we report in Chapter III very similar multivariate results for both proxies, although our predictive power is somewhat less with respect to the second. Consequently, while we can present only upper and lower bounds on the actual rate at which pretrial crime occurs, we feel confident that we have identified some systematic relationships that determine the rate.

In Chapter III and Appendix A, we examine the predictability of failure to appear, willful failure to appear, pretrial rearrest, and pretrial rearrest and conviction.

4. The Role of the Bondsman

Judge Wright's 1963 comment above that the District's bondsmen held the keys to the jail in their pockets did not reflect a peculiarity of the nation's capital. Forty years

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[33] See William M. Rhodes, Plea Bargaining: Who Gains? Who Loses? PROMIS Research Publication no. 14 (INSLAW, forthcoming), for discussion of legal and factual innocence in the context of PROMIS research. See Brian Forst, Judith Lucianovic, and Sarah J. Cox, What Happens After Arrest? A Court Perspective of Police Operations in the District of Columbia, PROMIS Research Publication no. 4 (INSLAW, 1977) for a detailed statistical analysis of the many forms of conviction and nonconviction in the District of Columbia. While the low conviction rate would suggest an overstatement, it was pointed out by Michael Kirby that because so many crimes are never cleared, pretrial rearrests may actually understate the extent of pretrial crime.

earlier, a massive study directed by Roscoe Pound and Felix Frankfurter had stated that "the real evil in the situation ... is ... the professional bondsmen who make a business of exploiting the misfortunes of the poor and whose connections with 'runners and shysters' tend to prostitute the administration of justice."[34] Major studies during the twenties in Missouri and Chicago[35] documented not only the prevalence but also the questionable nature of professional bondsmen's activities: use of unowned property as collateral, nonprosecution of bondsmen for fraudulent practices, and failure to collect forfeited bonds. These activities, often involving kickback arrangements with defense attorneys and police officers, relationships to organized crime, and collusive behavior with key criminal justice officials, have been described in several surveys of the field.[36] Nationally, the Wickersham Commission summarized its findings on bail as follows:

> Grave abuses as to bail are reported from almost every part of the land. There is general complaint

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[34] Reginald H. Smith and Herbert B. Ehrman, "The Criminal Courts," in Roscoe Pound and Felix Frankfurter, eds., Criminal Justice in Cleveland (Onio: The Cleveland Foundation, 1922, reprinted, Montclair, New Jersey: Patterson Smith, 1968): 290-92.

[35] Missouri Association for Criminal Justice, The Missouri Crime Survey (New York: Macmillan, 1926): 189-218; Arthur L. Beeley, The Bail System in Chicago (Chicago: University of Chicago Press, 1927; reprinted in 1966).

[36] See especially Goldfarb, Ransom: 110; National Center for State Courts, An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs: 16-21; and Freed and Wald, Bail in the United States: 22-38.

> that ... there is frequent carelessness as to security, that professional sureties flourish in connection with the criminal courts and are often permitted to assume an aggregate of liability which makes their bonds worthless, that forfeitures are not enforced, and that on the whole there is no effective security for appearance in cases where such security is needed.37

Until the past decade or so, the bondsman's reputation for corruption was matched only by his reputation for relentless pursuit of fugitives. Like the loan shark, the bondsman's financial success depends in part on his ability to intimidate would-be defaulters; and Freed and Wald cite impersonation of police officers and use of guns as tools of the bondsman's trade. They quote a Nebraska official as saying:

> professional bondsmen in our county are a very aggressive group and relentlessly pursue the defendant who skips bail.... This hard attitude on the part of some of these sureties has put the fear of God into a lot of these defendants who know what to expect in the event they skip bail; so we do not have any particular problem in this regard.38

A contemporary description of a New York "skip tracer" (one who returns fugitive defendants to the custody of their bondsmen for a fee) confirms that bondsmen still protect their investments fairly aggressively:

> Stashed in the attic of the [skip tracer's] home is an elaborate collection of photographic equipment and electronic surveillance gear, and several

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37National Commission on Law Observance and Enforcement, Criminal Procedure, Report no. 8 (Washington, D.C.: Government Printing Office, 1931, reprinted, Montclair, N.J.: Patterson Smith, 1968): 22.

38Freed and Wald, Bail in the United States: 30-31.

> large-calibre rifles. All that he usually carries to work, though, are handcuffs, shackles, a restraining belt, a nightstick, a bullet-proof vest and an attack-trained Doberman named Duke..... Duke and [the skip tracer] cruise the ghettos in a souped-up Ford LTD, equipped with CB, sirens, flasning red lights and, in the trunk, an anti-riot shotgun.39

With this history, it is no wonder that many people still perceive the bondsman as a sinister figure, lurking in the shadows of the criminal courthouse, waiting to prey on some unfortunate client. Yet within the past 15 years, bondsmen in the District of Columbia have become a struggling group. By encouraging a presumption of pretrial release, the 1966 Bail Reform Act has removed the best risks from the pool of potential clients for bondsmen. The rise of community groups acting as third-party custodians has removed many of the second-best risks from the pool. Because of a concomitant rise in violent crime, which has been reversed only in recent months, the bondsman is left to service an increasingly risky segment of an increasingly dangerous population.

As a result of all these trends, the bondsman's role in the District of Columbia has declined drastically since the early sixties. Freed and Wald report that prior to inception of the D.C. Bail Project in 1964, virtually no defendants were released on recognizance, so that nearly all defendants were potential clients for bondsmen. During its first few months of operation, the project obtained recognizance release

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[39]Robert Leder, "Frontier Justice Revisited," in New Times, March 6, 1978: 17.

for about 15 percent of all defendants, which left 85 percent to choose between bondsmen and their own savings to obtain release.[40] By 1968, two years after passage of the Bail Reform Act, the proportion of defendants required to post surety bond had dropped to 61 percent in a random sample tabulated by the National Bureau of Standards.[41] By 1974, the proportion had decreased to 29 percent (see Chapter II); and a special tabulation of PROMIS data for the first half of 1977 reports a decline to 23 percent. In the face of this steady decline, it comes as no surprise that over half the District's bondsmen retired in the decade following passage of the Bail Reform Act.[42]

Those who remain confront the difficult choice of risking their surety on a client already evaluated by the court as a bad risk. They are also frequently given the most serious cases, in which a substantial bond has been set--a decision often thought to reflect both the dangerousness of the defendant and the seriousness of the case. Dealing with such difficult situations has made most of the city's bondsmen

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[40]Freed and Wald, Bail in the United States: 64.

[41]National Bureau of Standards, Tabulation and Extended Analysis of Pre-Trial Release Data for Defendants in the District of Columbia, Report 10259, prepared for the National Institute of Law Enforcement and Criminal Justice, Grant NI 70-012, June 1970.

[42]Wice, Freedom for Sale: 53.

apprehensive. The following quote by one who has since retired from the business indicates the constant uneasiness:

> A guy that takes a gun and goes into a store or a bank must have it in the back of his mind that he'll use it if he has to. Now if I bail him and can't produce him in court, I've got to go get him. He didn't hesitate to pull a gun when he held you up and I make a good target, big as I am. Besides that the bonds in these cases run high, making the potential losses greater. Taking someone who has gone to the gun just isn't worth the risk. Besides a guy charged with that kind of offense knows he may be going away for a long time and that increases the chances he'll skip.[43]

Chapters II and III and Appendix A of this study examine several questions with respect to the role of bondsmen in the District of Columbia: How extensively are they used? In what types of cases? What criteria do they seem to apply in selecting defendants to bond? Controlling for the high-risk nature of their clients, how successfully do they produce them for court appearances?

5. The Role of Preventive Detention

While the 1966 Bail Reform Act did much to eliminate the abuses of financial bond in the District of Columbia, it opened what many saw as a legal gap through which too many dangerous defendants returned to the street, perhaps to commit more crimes while awaiting trial. In response to public expressions of concern, a "preventive detention" provision was added, with little debate, to an omnibus Court Reorganization Act in 1970. Once passed, the provision permitted the U.S.

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[43] The Washington Post, February 2, 1969: B-1.

Attorney, who prosecutes serious crimes in Superior Court, to request in a special hearing the detention of certain dangerous defendants without bond for up to 60 days while their cases are processed. This pretrial detention was intended to prevent them from committing more crimes while awaiting trial. While some hailed preventive detention as an important weapon in the war on crime,[44] others opposed it as a major assault on the presumption of innocence.[45]

Since it was enacted, preventive detention has borne out neither the hopes of its advocates nor the fears of its opponents. It simply has not been used enough to matter, as indicated by the request of only one preventive detention hearing during 1974. Bases and McDonald estimated that one-third of all felony defendants were eligible for preventive detention during the first four months of 1972.[46] If that ratio still holds, preventive detention could have been requested about 1,500 times in 1977. Instead, U.S. Attorney Earl J. Silbert stated recently that it was requested in only 40 cases, and granted in 34, during the 16 months ending in January 1978.[47]

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[44]See Bases and McDonald, Preventive Detention in the District of Columbia: 4-8, for an overview of the debate at that time.

[45]See Sam J. Ervin, "Foreword," in "Preventive Detention: An Empirical Analysis," Harvard Civil Rights - Civil Liberties Law Review 6, no. 2 (March 1971): 289-396.

[46]Bases and McDonald, Preventive Detention in the District of Columbia: 61.

[47]Statement of Earl J. Silbert before the Subcommittee on Governmental Efficiency and the District of Columbia, U.S. Senate, January 31, 1978.

In November 1977, the non-use of preventive detention encouraged the House of Representatives to pass H.R. 7747, which broadens the eligibility criteria for preventive detention and extends the allowable detention period from 60 to 90 days. Chapter IV of this report assesses the potential impact of the bill on pretrial misconduct in view of findings reported in Chapter III and Appendix A. Chapter II examines the extent to which preventive detention has been used in recent years, and explores some factors that have been suggested as influences on its rate of use.

In summary, then, the remainder of this report is intended to provide an overview of pretrial release in the District of Columbia and to provide some insights into the following issues:

- The purposes and uses of bail
- Judicial disparity in the release decision
- Prediction of pretrial misconduct
- The role of the bondsman
- The role of preventive detention

II. PRETRIAL RELEASE IN THE DISTRICT OF COLUMBIA: STATISTICAL PROFILE

This chapter offers a statistical profile of the operation of the District's pretrial release system. The profile is based on data concerning all felony and misdemeanor cases arraigned in D.C. Superior Court during the year 1974. Of the nearly 11,000 cases included in this study, approximately 40 percent involve felony charges; the remainder are serious misdemeanors. This chapter focuses on the pretrial release decisions made by judges for the defendants in these cases and characteristics of the defendants receiving particular types of release. (Because the analysis is focused on judicial decisions, release on citation or stationhouse bond is excluded from the remaining discussion.) Another major purpose of the chapter is to describe the extent of pretrial misconduct by released defendants, i.e., nonappearances and rearrests, and the characteristics of defendants involved in these acts. Finally, there is a discussion of the city's use of preventive detention in recent years.

A. RELEASE CATEGORIES

For both accused felons and misdemeanants, the most common form of release during 1974 was on the defendant's personal recognizance (PR). Personal recognizance may be granted with or without a set of accompanying conditions, such as requirements to report periodically to the Bail Agency, to maintain or secure employment, to stay within the D.C. area, or to submit to urinanalysis. Since these conditions are not recorded in PROMIS,

we must recognize that throughout this report, the single term "personal recognizance" covers a variety of release terms. Despite the accompanying conditions, PR is still the release condition most desired by defendants, because it inflicts no financial hardship, in contrast to the traditional bail system. Of those for whom release conditions are known, Exhibit II-1 indicates that nearly 45 percent of felony defendants and 71 percent of misdemeanor defendants were able to obtain personal recognizance release. As noted in Chapter I, surveys of pretrial release by Wice and by Thomas have found the District's personal recognizance release rate to be the highest in the nation among major cities.[1]

Considering only those cases for which release conditions were recorded, nearly 17 percent of felony defendants were granted third party releases as compared with only about 9 percent of the misdemeanants. This disparity probably results from the custodians' stated desire to work with the more serious defendants instead of misdemeanants. The primary custodian, Bonabond, is an organization of ex-offenders that served in about 1,000 of the 1,334 known third-party releases during 1974.[2]

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[1]See Paul B. Wice, Freedom for Sale (Lexington, Mass.: Lexington Books, 1974); and Wayne Thomas, Bail Reform in America (Berkeley: University of California Press, 1976).

[2]Evaluation of Third Party Custody Programs, submitted to the D.C. Office of Criminal Justice Plans and Analysis by Lewin & Associates (Washington, D.C., 1975): 2.

Exhibit II-1

Distribution of Pretrial Release Conditions, 1974

(D.C. Superior Court)

Release Type	Cases Obtaining Release Type					
	Felonies			Misdemeanors		
	Number	Percent		Number	Percent	
		Of Total	Of Known		Of Total	Of Known
Personal Recognizance	2076	36.9%	44.8%	4423	56.7%	70.7%
Surety Bond	1338	23.8	28.9	756	9.7	12.1
Cash Bond	346	6.2	7.5	415	5.3	6.6
Third Party Custody	782	13.9	16.9	552	7.1	8.9
Other*	89	1.6	1.9	102	1.3	1.6
Unknown	993	17.7	---	1547	19.8	---
Total	5624	100.1%†	100.0%	7795	99.9%	99.9%

Source: PROMIS (Prosecutor's Management Information System).

* "Other" includes mental observation, narcotics treatment, alcohol treatment, and preventive detention.

† Percentages may not sum to 100.0 due to rounding error.

Money bail, which has traditionally been required of the majority of defendants in other jurisdictions, was required of only 36 percent of felony defendants and 19 percent of misdemeanor defendants in Washington during 1974.

Exhibits II-2a and II-2b present the distributions of known cash and surety bonds set in felony and misdemeanor cases in 1974. Examining the felony cases, cash bonds seemed to be clustered at either $1,000 (34 percent), $2,000 (15 percent), or $5,000 (12 percent). The surety bonds were clustered in a similar pattern, although there were slightly fewer $1,000 bonds but more $5,000 bonds (20 percent). The median cash bond was $1,500, and the median surety bond was $2,500. As might be expected, the misdemeanor financial bonds were appreciably less on average, and even more clearly clustered. Twenty-two percent of the surety bonds were set at $500 and 35 percent at $1,000. The cash bonds were similarly distributed--40 percent at $500 and 29 percent at $1,000. Frequently, the original bond requirement is later reduced or eliminated entirely; however, such changes are not systematically recorded in our data base.

A few special categories of release, such as mental observation holds, narcotics and alcohol treatment programs, and preventive detention were grouped as "other" in Exhibit II-1. The remaining exhibits in this chapter exclude both the "other" and "unknown" groups unless otherwise stated.

Exhibit II-2a

Frequency Distributions of Cash and Surety Bonds
Set in Felony Cases, 1974

(D.C. Superior Court)

Bond Amount	Surety Bond		Cash Bond	
	Relative Frequency	Cumulative Frequency	Relative Frequency	Cumulative Frequency
$ 100	0.000%	0.000%	0.289%	0.289%
200	0.224	0.224	0.289	0.578
300	0.224	0.448	0.289	0.867
500	2.990	3.438	8.671	9.538
750	0.224	3.662	0.289	9.827
1000	18.386	22.048	34.393	44.220
1200	0.000	22.048	0.289	44.509
1500	7.549	29.596	7.225	51.734
2000	16.667	46.263	15.318	67.052
2500	7.250	53.513	3.468	70.520
3000	11.510	65.022	9.249	79.769
3500	1.121	66.144	0.867	80.636
4000	0.673	66.816	0.289	80.925
5000	20.030	86.846	12.139	93.064
5500	0.075	86.921	0.000	93.064
6000	0.075	86.996	0.000	93.064
7500	1.644	88.640	0.578	93.642
10000	6.353	94.993	2.312	95.954
15000	1.495	96.487	0.289	96.243
20000	0.523	97.010	0.000	96.243
25000	1.644	98.655	2.023	98.266
30000	0.299	98.954	0.289	98.555
40000	0.149	99.103	0.000	98.555
50000	0.598	99.701	0.867	99.422
75000	0.075	99.776	0.000	99.422
100000	0.224	100.000	0.289	99.711
500000	0.000	100.000	0.289	100.000

Source: PROMIS (Prosecutor's Management Information System).

N = 1338 surety bonds, 346 cash bonds.

Exhibit II-2b

Frequency Distributions of Cash and Surety Bonds
Set in Misdemeanor Cases, 1974

(D.C. Superior Court)

	Surety Bond		Cash Bond	
Bond Amount	Relative Frequency	Cumulative Frequency	Relative Frequency	Cumulative Frequency
$ 50	0.132%	0.132%	0.482%	0.482%
100	0.661	0.793	3.373	3.855
150	0.132	0.925	0.241	4.096
200	0.264	1.189	0.723	4.819
250	0.396	1.585	0.723	5.542
300	4.888	6.473	6.506	12.048
400	0.000	6.473	0.241	12.289
500	22.325	28.798	40.723	53.012
750	0.264	29.062	3.373	56.386
1000	35.667	64.729	29.639	86.024
1300	0.132	64.861	0.000	86.024
1500	9.247	74.108	5.783	91.807
1600	0.396	74.505	0.000	91.807
2000	9.379	83.884	3.614	95.422
2300	0.132	84.016	0.000	95.422
2500	5.020	89.036	1.205	96.627
2800	0.132	89.168	0.000	96.627
3000	4.491	93.659	0.964	97.590
3500	0.396	94.055	0.241	97.831
4000	0.264	94.320	0.000	97.831
5000	4.756	99.075	1.446	99.277
10000	0.925	100.000	0.482	99.759
25000	0.000	100.000	0.241	100.000

Source: PROMIS (Prosecutor's Management Information System).

N = 757 surety bonds, 415 cash bonds.

B. IMPORTANCE OF THE CHARGE

Even though D.C. laws instruct judges to release on personal recognizance any defendant who is likely to appear in court, it nevertheless seems that the seriousness of the charge against the defendant has some impact upon the judge's pretrial release decision. Exhibits II-3a and II-3b illustrate how the various release categories are distributed by charge.

In viewing the felonies first, with the natural exception of bail violation defendants, homicide defendants were least likely to obtain personal recognizance release and most likely to receive surety bonds. Specifically, 31 percent of homicide defendants received personal recognizance compared with 45 percent for larceny, 62 percent for assault, and 66 percent for drug charges. Homicide and bail violation defendants were also the only groups to have a higher percentage of defendants receive surety bonds than recognizance release, which indicates the importance judges place on these offense types. The 43 percent surety bond rate for homicide defendants is appreciably higher than for all the other categories of crimes. This rate not only expresses the judge's reluctance to release homicide defendants outright, but it also passes responsibility to the bondsman for controlling the defendant's chances for pretrial freedom.[3]

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[3] The use of bail to diffuse release responsibility in cases involving serious crimes has been noted by Frederic Suffet, "Bail Setting: A Study of Courtroom Interaction," reprinted in George F. Cole, ed., Criminal Justice: Law and Politics (North Scituate, Mass.: Duxbury Press, 1972): 309-310.

Exhibit II-3a

Release Type Imposed, by Crime Type Charged--1974 Felonies
(D.C. Superior Court)

RELEASE TYPE		CRIME TYPE																
		TOTAL	HOMICIDE	ASSAULT	SEXASLT	ROBBERY	BURGLARY	LARCENY	FRAUD	PROPERTY	GUN	OTHER WEAPON	GAMBLING	CONSSEX	DRUGS	BAIL	KIDNAP	OTHER
TOTAL	PERCENTAGE	100.0	4.5	13.5	4.4	28.5	19.8	11.8	5.7	0.9	3.5	0.3	1.8	0.2	1.1	2.2	0.2	1.7
	FREQUENCY	4631	208	624	204	1318	917	546	266	42	162.0	13	82	8	53.0	100	8	80
PERSONAL RECOGNIZANCE	PERCENTAGE	44.8	31.3	62.0	41.7	37.8	43.3	45.4	59.8	61.9	46.3	46.2	51.2	25.0	66.0	10.0	62.5	45.0
	FREQUENCY	2076	65	387	85	498	397	248	159	26	75	6	42	2	35	10	5	36
SURETY BOND	PERCENTAGE	28.9	42.8	18.9	22.0	32.8	28.6	26.6	21.1	16.6	28.4	30.8	37.8	37.5	11.4	67.0	37.5	30.0
	FREQUENCY	1338	89	118	45	432	262	145	56	7	46	4	31	3	6	67	3	24
CASH BOND	PERCENTAGE	7.4	5.8	3.4	5.9	7.7	8.3	10.4	5.6	7.1	10.5	7.7	1.2	0.0	7.6	18.0	0.0	8.8
	FREQUENCY	346	12	21	12	102	76	57	15	3	17	1	1	0	4	18	0	7
THIRD PARTY	PERCENTAGE	16.9	18.3	13.6	26.5	20.3	17.4	16.8	13.5	9.5	12.3	0.0	0.0	12.5	15.1	4.0	0.0	15.0
	FREQUENCY	782	38	85	54	268	160	92	36	4	20	0	0	1	8	4	0	12
OTHER	PERCENTAGE	1.9	1.9	2.0	3.9	1.4	2.4	0.8	0.0	4.8	2.5	15.4	9.7	25.0	0.0	1.0	0.0	1.3
	FREQUENCY	89	4	13	8	18	22	4	0	2	4	2	8	2	0	1	0	1

Source: PROMIS (Prosecutor's Management Information System).

Exhibit II-3b

Release Type Imposed, by Crime Type Charged--1974 Misdemeanors
(D.C. Superior Court)

RELEASE TYPE		CRIME TYPE																
		OTHER	HOMICIDE	ASSAULT	SEXASLT	ROBBERY	BURGLARY	LARCENY	FRAUD	PROPERTY	GUN	OTHER WEAPON	GAMBLING	CONSSEX	DRUGS	BAIL	KIDNAP	OTHER
TOTAL																		
	PERCENTAGE	100.0	0.1	11.5	0.1	0.6	6.2	26.9	2.6	2.4	7.7	1.5	1.4	13.7	20.7	2.8	0.0	1.7
	FREQUENCY	6248	6.0	716	9	40	389	1678	163	147	483	91	87	859	1294	177	0	109
PERSONAL RECOGNIZANCE																		
	PERCENTAGE	70.8	66.7	70.8	77.8	62.5	58.1	69.5	71.8	65.3	78.1	68.1	77.0	69.7	82.1	17.5	0.0	69.7
	FREQUENCY	4423	4	507	7	25	226	1167	117	96	377	62	67	599	1062	31	0	76
SURETY BOND																		
	PERCENTAGE	12.1	33.4	12.2	0.0	20.0	14.9	13.5	9.8	11.5	11.2	14.3	18.3	8.7	6.5	48.0	0.0	13.8
	FREQUENCY	756	2	87	0	8	58	226	16	17	54	13	16	75	84	85	0	15
CASH BOND																		
	PERCENTAGE	6.6	0.0	5.1	11.1	2.5	8.5	6.7	7.4	6.1	3.7	2.2	2.3	11.9	3.4	19.2	0.0	7.4
	FREQUENCY	415	0	37	1	1	33	111	12	9	18	2	2	103	44	34	0	8
THIRD PARTY																		
	PERCENTAGE	8.8	0.0	9.1	11.1	15.0	14.1	8.5	9.2	12.9	6.0	14.3	1.1	9.5	7.1	12.4	0.0	9.2
	FREQUENCY	552	0	65	1	6	55	142	15	19	29	13	1	82	92	22	0	10
OTHER																		
	PERCENTAGE	1.6	0.0	2.8	0.0	0.0	4.4	2.0	1.8	4.1	1.0	1.1	1.1	0.0	1.0	2.8	0.0	0.0
	FREQUENCY	102	0	20	0	0	17	32	3	6	5	1	1	0	12	5	0	0

Source: PROMIS (Prosecutor's Management Information System).

Exhibits II-3a and II-3b cannot provide complete information about the relationship between crime seriousness and release conditions. At the extremes, the homicide results above can be contrasted with the 82 percent PR rate for misdemeanor drug offenses, which represent largely marijuana charges. There are inherent difficulties in quantifying finer degrees of crime seriousness, although attempts to do so are described in note 10 of Appendix A. But even assuming away those difficulties, another problem is the broad range of specific charges within each column heading. The larceny, sexual assault, and drug categories each contain a broad range of felonies and misdemeanors of diverse seriousness, making generalizations about the overall group difficult.

With these caveats in mind, let us move on to a brief look at misdemeanor charges and their pretrial release consequences. Beginning with personal recognizance release, it is at first surprising to see the high proportion of homicide defendants (66.7 percent) who received this type of release. When one realizes, however, that involuntary manslaughter cases dominate the misdemeanor homicide category, it is not so unexpected. These are often auto fatalities involving first offenders.

Although there was nothing extraordinary about most of the misdemeanor statistics in Exhibit II-3b, at least two patterns stand out:

(1) Third-party release was used most frequently in weapon, robbery, and burglary cases. This is consistent with an objective of the custodians to obtain release for only the more serious misdemeanants.

(2) Robbery defendants appeared to receive the most stringent release conditions, except for alleged bail violators.

C. JUDGE VARIABILITY

The issue of judicial disparity in setting pretrial release conditions was discussed in Chapter I. One view of this disparity is presented in Exhibits II-4a and II-4b, which report, separately for felony and misdemeanor cases, the distributions of release decisions for the ten Superior Court judges who were most active in making pretrial release decisions. Because arraignment judges are rotated on a periodic basis, it is reasonable to assume that all ten faced a similar mix of cases. Therefore, great inconsistencies among these judges would raise the question of arbitrary or uninformed use of their discretionary powers.

Examining Exhibits II-4a and II-4b, it appears at first glance that significant variation exists in judicial pretrial release decision making.[4] The range in felony personal recognizance rates extends from 19 percent to 62 percent: a 43-point spread. However, closer examination of the exhibit reveals that much of the apparent variation merely reflects a difference in which type of nonfinancial release the judge prefers--personal recognizance or third-party release.

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[4] In fact, tests for independence of release conditions across judges produce Chi-square statistics of 602.6 for Exhibit II-4a and 382.0 for Exhibit II-4b. At the 0.001 significance level, these statistics indicate that judge identity strongly affects release conditions.

Exhibit II-4a

Release Type Imposed, by Arraignment Judge--1974 Felonies
(D.C. Superior Court)

RELEASE TYPE	JUDGE											
	TOTAL	1	2	3	4	5	6	7	8	9	10	OTHERS
TOTAL												
PERCENTAGE	100.0	8.3	5.3	6.3	4.7	11.8	7.8	6.1	5.4	7.6	4.9	31.7
FREQUENCY	4631	385	246	293	219	546	361	284	250	352	226	1467
PERSONAL RECOGNIZANCE												
PERCENTAGE	44.8	61.8	60.6	36.5	22.4	46.9	46.8	32.7	56.8	40.9	19.0	46.7
FREQUENCY	2076	238	149	107	49.0	256	169	93	142	144	43	685
SURETY BOND												
PERCENTAGE	28.9	35.9	27.7	32.7	28.8	24.5	25.5	23.2	27.2	37.8	34.1	27.4
FREQUENCY	1338	138	68	96	63	134	92	66	68	133	77	402
CASH BOND												
PERCENTAGE	7.4	0.3	6.5	3.4	13.7	7.4	20.5	1.8	7.6	2.3	13.7	7.6
FREQUENCY	346	1	16	10	30	40	74	5	19	8	31	111
THIRD PARTY												
PERCENTAGE	16.9	1.8	4.1	23.5	32.9	18.5	6.4	36.6	8.4	17.9	32.3	16.3
FREQUENCY	782	7	10	59	72	101	23	104	21	63	73	239
OTHER												
PERCENTAGE	1.9	0.3	1.2	3.7	2.4	2.8	0.9	5.7	0.0	1.2	0.8	1.9
FREQUENCY	89	1	3	11	5	15	3	16	0	4	2	29

Source; PROMIS (Prosecutor's Management Information System).

Exhibit II-4b

Release Type Imposed, by Arraignment Judge--1974 Misdemeanors
(D.C. Superior Court)

RELEASE TYPE		JUDGE										
		TOTAL	1	2	3	4	5	6	7	8	9	10	OTHERS
TOTAL	PERCENTAGE	100.0	7.8	5.9	5.6	4.7	10.7	10.9	7.8	6.1	8.1	5.2	27.1
	FREQUENCY	6249	489	371	349	291	671	679	488	384	506	328	1692
PERSONAL RECOGNIZANCE	PERCENTAGE	70.8	78.5	82.2	63.0	60.5	75.0	68.8	68.2	87.8	66.6	44.4	69.6
	FREQUENCY	4423	384	305	220	176	503	467	333	337	337	182	1178.0
SURETY BOND	PERCENTAGE	12.2	19.6	11.6	20.1	11.0	6.7	12.8	9.3	6.2	12.4	12.8	12.4
	FREQUENCY	757	96	43	70	32	45	87	45	24	63	42	210
CASH BOND	PERCENTAGE	6.6	0.8	3.8	3.5	7.5	7.3	11.9	6.3	3.9	7.8	11.3	6.6
	FREQUENCY	415	4	14	12	22	49	81	31	15	39	37	111
THIRD PARTY	PERCENTAGE	8.8	0.6	1.3	9.7	17.5	8.0	5.7	14.1	1.8	10.9	19.8	10.0
	FREQUENCY	552	3	5	34	51	54	39	69	7	55	65	170
OTHER	PERCENTAGE	1.6	0.4	1.0	3.7	3.4	3.0	0.7	2.0	0.3	2.4	0.6	1.4
	FREQUENCY	102	2	4	13	10	20	5	10	1	12	2	23

Source: PROMIS (Prosecutor's Management Information System).

Combining both types of nonfinancial release, the range across judges shrinks to only a 15-point spread--from 65 to 50 percent. Exhibit II-5 illustrates that grouping affects apparent judge variability in misdemeanor cases as well, reducing a 32-percentage-point range in PR release rates to a 14-point range in nonfinancial release rates. Thus, it seems that much of the apparent judge disparity reflects disagreement about the substitutability of the third-party and personal-recognizance forms of nonfinancial release, rather than the question of whether particular defendants merit nonfinancial release in any form. Exhibit II.5.

We found little disparity with respect to financial conditions also, although a few interesting patterns should be noted. In Exhibit II-4a, the release type exhibiting least variability in felony cases was surety bond, whereas the cash bond rate varied from 0-to-20 percent. Since these cash bonds actually represent percetnage deposits, usually 10 percent, the variation may reflect different opinions as to whether such a small potential loss is an effective inducement to appear in court. Of course, given the small number of cash bond releases for most judges, a few cases involving high-risk defendants may distort the results and make a judge appear to be much more punitive than he actually is, relative to the rest of the bench.

In Exhibit II-4b, which deals with misdemeanors, the figures show little variation. The evaluation is made even more difficult by the small number of financial bond cases. Nevertheless, the finding emerges that two of the judges require

Exhibit II-5

Range of Release Rates for Personal Recognizance and Third-Party Custody--1974 Misdemeanors

	PR	Third Party	Combined
Overall City Average	70.8%	8.8%	81.6%
2 Lowest Judges	60.5 55.5	17.5 19.8	77.5 75.3
2 Highest Judges	82.2 87.8	1.3 1.8	82.5 89.6

Source: PROMIS

surety bonds at a rate nearly double the ten-judge average.

It is interesting to note that the judges' relative preferences for release alternatives were fairly consistent for felonies and misdemeanors. This observation was confirmed by ranking judges from 1 through 10 in order of use of a given alternative separately for felonies and misdemeanors, then computing Spearman's rank correlation coefficient for the two crime groups. The correlation coefficient was 0.915* between misdemeanor and felony ranks in use of personal recognizance, 0.903* for use of third-party custody, 0.806* for use of both nonfinancial release types combined, 0.621 for use of surety bond and 0.676* for use of cash bond.

D. DEFENDANT'S BACKGROUND

This subsection presents a statistical description of judicial release decisions, tabulated by defendant characteristics generally considered pertinent to the setting of conditions. While such a picture of what kinds of defendants receive various conditions is useful in provoking questions about bail system operation, it cannot describe how judges weigh the characteristics in setting conditions. The latter problem is considered with the aid of multivariate statistical techniques in Chapter III.

1. Prior Arrests

For the judge making a bail decision, the prior criminal record of the defendant is considered by some to be the most

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* Indicates statistical significance at the 0.05 level.

important release criterion, following the seriousness of the charge. Exhibits II-6 through II-8 present a statistical analysis of how a prior adult arrest record affects the release decision for both felons and misdemeanants.[5]

Although the public may believe that most current defendants have a prior criminal record, these exhibits show that a significant minority of defendants in each category did not have a prior adult arrest. More specifically, 39 percent of the felony defendants and 54 percent of the misdemeanor defendants had no known prior arrests. The exhibits do show, however, that there is a small group of defendants with extensive arrest histories. Ten percent of the accused felons had five or more prior arrests for crimes against persons; the same proportion had eight or more prior arrests for other crimes. As might be expected, somewhat lower rates were observed among accused misdemeanants.

These four exhibits suggest that prior arrests exert a systematic influence on the judge's decision. Looking at personal recognizance as an example, the felony defendants with prior arrests received PR less frequently than those with no arrest history, according to Exhibit II-6a. Moreover, Exhibits II-7a and II-8a display a fairly consistent trend: the greater the number of prior arrests, the lower the rate of PR release.

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[5]Throughout this discussion, "arrest" refers to an adult arrest for a felony or serious misdemeanor, for which the defendant was fingerprinted by a police agency reporting to the FBI.

Exhibit II-6a

Release Type Imposed, by Prior Arrest Status--1974 Felonies
(D.C. Superior Court)

RELEASE TYPE		PRIOR RECORD TYPE			
		ALL	PRIOR ARRESTS	NO PRIOR ARRESTS	PRIORS UNKNOWN
TOTAL					
	PERCENTAGE	100.0	61.3	38.7	0.0
	FREQUENCY	4631	2837	1793	1
PERSONAL RECOGNIZANCE					
	PERCENTAGE	44.8	38.0	55.6	0.0
	FREQUENCY	2076	1079	997	0
SURETY BOND					
	PERCENTAGE	28.9	34.9	19.2	100.0
	FREQUENCY	1338	992	345	1
CASH BOND					
	PERCENTAGE	7.4	8.8	5.4	0.0
	FREQUENCY	346	249	97	0
THIRD PARTY					
	PERCENTAGE	16.9	16.2	18.0	0.0
	FREQUENCY	782	459	323	0
OTHER					
	PERCENTAGE	1.9	2.0	1.8	0.0
	FREQUENCY	89	58	31	0

Source: PROMIS

Exhibit II-6b

Release Type Imposed, by Prior Arrest Status--1974 Misdemeanors

(D.C. Superior Court)

RELEASE TYPE		PRIOR RECORD TYPE			
		ALL	PRIOR ARRESTS	NO PRIOR ARRESTS	PRIORS UNKONWN
TOTAL					
	PERCENTAGE	100.0	45.7	54.3	0.0
	FREQUENCY	6249	2853	3393	3
PERSONAL RECOGNIZANCE					
	PERCENTAGE	70.8	59.2	80.5	100.0
	FREQUENCY	4423	1690	2730	3
SURETY BOND					
	PERCENTAGE	12.2	18.4	6.9	0.0
	FREQUENCY	757	525	232	0
CASH BOND					
	PERCENTAGE	6.6	8.8	4.8	0.0
	FREQUENCY	415	252	163	0
THIRD PARTY					
	PERCENTAGE	8.8	11.2	6.9	0.0
	FREQUENCY	552	319	233	0
OTHER					
	PERCENTAGE	1.6	2.4	1.1	0.0
	FREQUENCY	102	67	35	0

Source: PROMIS

Exhibit II-7a

Release Type Imposed, by Number of Prior Arrests for Crimes Against Persons--1974 Felonies

(D.C. Superior Court)

RELEASE TYPE	NUMBER OF PRIOR ARRESTS FOR CRIMES AGAINST PERSONS						
	TOTAL	0	1	2	3	4	5+
TOTAL							
PERCENTAGE	100.0	63.4	9.9	7.3	5.1	3.8	10.5
FREQUENCY	4631	2937	458	336	235	177	488
PERSONAL RECOGNIZANCE							
PERCENTAGE	44.8	50.8	41.0	39.0	35.7	33.3	24.8
FREQUENCY	2076	1493	188	131	84	59	121
SURETY BOND							
PERCENTAGE	28.9	23.7	28.2	31.8	40.8	41.8	48.1
FREQUENCY	1338	697	129	107	96	74	235
CASH BOND							
PERCENTAGE	7.4	6.2	7.8	8.6	9.3	13.0	10.8
FREQUENCY	346	183	36	29	22	23	53
THIRD PARTY							
PERCENTAGE	16.9	17.5	21.0	17.6	11.5	9.0	14.3
FREQUENCY	782	514	96	59	27	16	70
OTHER							
PERCENTAGE	1.9	1.6	1.9	3.0	2.6	2.9	1.8
FREQUENCY	89	50	9	10	6	5	9

Source: PROMIS

Exhibit II-7b

Release Type Imposed, by Number of Prior Arrests for Crimes Against Persons--1974 Misdemeanors

(D.C. Superior Court)

RELEASE TYPE	NUMBER OF PRIOR ARRESTS FOR CRIMES AGAINST PERSONS						
	TOTAL	0	1	2	3	4	5+
TOTAL							
PERCENTAGE	100.0	76.8	8.3	4.8	3.1	1.7	5.4
FREQUENCY	6249	4798	516	298	193	104	340
PERSONAL RECOGNIZANCE							
PERCENTAGE	70.8	74.9	64.1	59.1	54.9	53.8	47.4
FREQUENCY	4423	3593	331	176	106	56	161
SURETY BOND							
PERCENTAGE	13.2	9.7	16.7	18.5	18.1	22.1	26.8
FREQUENCY	757	467	86	55	35	23	91
CASH BOND							
PERCENTAGE	6.6	6.2	6.4	7.1	8.8	11.6	10.6
FREQUENCY	415	296	33	21	17	12	36
THIRD PARTY							
PERCENTAGE	8.8	7.9	11.0	12.1	13.0	11.5	12.4
FREQUENCY	552	380	57	36	25	12	42
OTHER							
PERCENTAGE	1.6	1.3	1.8	3.4	5.2	1.0	3.0
FREQUENCY	102	62	9	10	10	1	10

Source: PROMIS

Exhibit II-8a

Release Type Imposed, by Number of Prior Arrests for Nonpersonal Crimes--1974 Felonies

(D.C. Superior Court)

RELEASE TYPE		NUMBER OF ARRESTS FOR NONPERSONAL CRIMES										
		TOTAL	0	1	2	3	4	5	6	7	8+	UNKNOWN
TOTAL												
	PERCENTAGE	100.0	54.7	8.7	7.5	4.8	4.2	4.0	2.6	1.8	10.0	1.7
	FREQUENCY	4631	2535	401	347	221	196	183	120	83	465	80
PERSONAL RECOGNIZANCE												
	PERCENTAGE	44.8	51.2	44.4	43.8	40.3	30.6	35.0	30.8	36.1	29.0	42.5
	FREQUENCY	2076	1297	178	152	89	60	64	37	30	135	34
SURETY BOND												
	PERCENTAGE	28.9	23.6	24.5	28.5	35.7	44.4	39.3	40.9	39.7	42.6	28.8
	FREQUENCY	1338	600	48	99	79	87	72	49	33	198	23
CASH BOND												
	PERCENTAGE	7.4	6.3	8.2	9.8	6.8	9.2	7.6	4.1	13.2	10.5	8.8
	FREQUENCY	346	160	33	34	15	18	14	5	11	49	7
THIRD PARTY												
	PERCENTAGE	16.9	17.0	20.9	16.7	14.9	14.3	15.3	22.5	10.8	14.8	18.8
	FREQUENCY	782	431	84	58	33	28	28	27	9	69	15
OTHER												
	PERCENTAGE	1.9	1.8	2.0	1.2	2.3	1.5	2.7	1.6	0.0	3.0	1.3
	FREQUENCY	89	47	8	4	5	3	5	2	0	14	1

Source: PROMIS

Exhibit II-8b

Release Type Imposed, by Number of Prior Arrests for Nonpersonal Crimes--1974 Misdemeanors

(D.C. Superior Court)

RELEASE TYPE		NUMBER OF PRIOR ARRESTS FOR NONPERSONAL CRIMES										
		TOTAL	0	1	2	3	4	5	6	7	8+	UNKNOWN
TOTAL	PERCENTAGE	100.0	63.1	8.8	5.1	4.0	3.1	2.6	1.7	1.4	8.7	1.5
	FREQUENCY	6249	3944	553	319	247	193	160	107	89	546	91
PERSONAL RECOGNIZANCE	PERCENTAGE	70.8	78.0	73.2	67.1	58.7	59.1	52.5	51.4	46.1	41.8	64.8
	FREQUENCY	4423	3078	405	214	145	114	84	55	41	228	59
SURETY BOND	PERCENTAGE	12.2	8.2	6.9	8.8	21.4	13.5	21.9	19.6	20.2	30.4	15.4
	FREQUENCY	747	315	60	39	53	26	35	21	18	166	14
CASH BOND	PERCENTAGE	6.6	5.1	6.8	9.4	6.8	9.3	9.4	11.2	15.7	11.7	3.3
	FREQUENCY	415	204	38	30	17	18	15	12	14	64	3
THIRD PARTY	PERCENTAGE	8.8	7.3	8.7	9.4	9.7	14.5	14.4	16.8	12.4	13.0	12.1
	FREQUENCY	552	288	48	30	24	28	23	18	11	71	11
OTHER	PERCENTAGE	1.6	1.3	0.4	1.8	3.2	3.6	1.9	0.9	5.6	3.0	4.4
	FREQUENCY	102	49	2	6	8	7	3	1	5	17	4

Source: PROMIS

From the crime control perspective, one would expect that as the number of prior arrests increased, there would be increased use of cash and surety bonds. Considering both release types combined, Exhibits II-7a, II-7b, II-8a, and II-8b suggest that such a policy is operating. However, within the general category "financial release," the surety-to-cash ratio remains in the neighborhood of 4-to-1 for felony defendants, regardless of the number of prior arrests for either type of crime.

The use of third-party release for felony defendants was so erratic that few conclusions can be drawn. From an overall third-party release rate of 17 percent for felony defendants, there was no indication that the rate changed monotonically in either direction as the number of prior arrests increased. A possible explanation for this lack of a trend is that, as previously noted, the major organization willing to serve as a third-party supervisor has expressed an interest in handling disadvantaged defendants, often those with several prior arrests. Since this policy is so controversial, some judges will agree more willingly than others, causing a rather erratic use of third-party custodians with respect to the number of prior arrests.

Both Exhibits II-7b and II-8b show that misdemeanants are also less likely to receive release on recognizance as their number of prior arrests increases. Thus, over three-quarters of the alleged misdemeanants with no prior arrests received PR release, and fewer than half of those with five or more were so fortunate. In contrast, a misdemeanor defendant's chances for third-party

release seemed to rise with the number of his prior arrests, a probable reflection of the policies of those organizations serving as sponsors for these defendants.

It is useful to examine how a prior record interacts with crime type of the current case in determining release conditions. Exhibits II-9a and II-9b report the distributions of release conditions by crime type, separately for defendants without and with prior records. The same is done for alleged misdemeanants in Exhibits II-10a and II-10b.

These exhibits offer further support to the claim that, consistent with the crime control objective, judges do seem to consider the defendant's previous criminal record in making their pretrial release decisions. For every crime type except gambling, defendants with prior records received PR conditions less often, and surety bond more often, than defendants without prior records. Because of small cell sizes, we hesitate to make too much of the lone gambling exception, which appears in both felonies and misdemeanors. However, it may reflect judges' perceptions that chronic gamblers present less of a threat to the community than chronic offenders of other types, such as rapists, robbers, and burglars. The latter types, plus homicide defendants with prior arrests, were among the groups most likely to be released to third-party custodians, another indication that the custodians focus their efforts on defendants who are unlikely to qualify for the other forms of release.

Exhibit II-9a

Release Conditions Imposed, by Crime Type--Felony Defendants Without Prior Arrests, 1974

(D.C. Superior Court)

	CRIME TYPE																
RELEASE TYPE	TOTAL	HOMICIDE	ASSAULT	SEXASLT	ROBBERY	BURGLARY	LARCENY	FRAUD	PROPERTY	GUN	OTHER WEAPON	GAMBLING	CONSSEX	DRUGS	BAIL	KIDNAP	OTHER
TOTAL																	
PERCENTAGE	100.0	5.0	15.6	4.8	26.9	17.6	12.8	7.3	1.2	1.9	0.2	2.8	0.3	0.6	1.2	0.2	1.7
FREQUENCY	1793	89	280	86	482	316	230	131	21	34	4.0	50.0	5	10	21	3	31
PERSONAL RECOGNIZANCE																	
PERCENTAGE	55.6	39.3	69.6	45.3	47.5	55.1	57.4	72.5	66.7	55.9	75.0	50.0	40.0	70.0	28.6	100.0	61.3
FREQUENCY	997	35	195	39	229	174	132	95	14	19	3	25	2	7	6	3	19
SURETY BOND																	
PERCENTAGE	19.2	25.8	14.3	13.9	22.1	17.1	18.3	13.8	19.0	11.8	25.0	44.0	20.0	10.0	42.8	0.0	22.6
FREQUENCY	345	23	40	12	107	54	42	18	4	4	1	22	1	1	9	0	7
CASH BOND																	
PERCENTAGE	5.4	9.0	2.9	10.5	4.6	5.4	7.3	2.3	4.8	11.8	0.0	0.0	0.0	20.0	23.8	0.0	3.2
FREQUENCY	97	8	8	9	22	17	17	3	1	4	0	0	0	2	5	0	1
THIRD PARTY																	
PERCENTAGE	18.0	22.5	11.8	29.1	23.9	20.6	16.1	11.5	4.8	20.6	0.0	0.0	0.0	0.0	4.8	0.0	12.9
FREQUENCY	323	20	33	25	115	65	37	15	1	7	0	0	0	0	1	0	4
OTHER																	
PERCENTAGE	1.8	3.4	1.4	1.2	1.8	1.9	0.8	0.0	4.8	0.0	0.0	6.0	40.0	0.0	0.0	0.0	0.0
FREQUENCY	16	0	2	0	5	5	0	0	0	0	0	2	2	0	0	0	0

Source: PROMIS

Exhibit II-9b

Release Conditions Imposed, by Crime Type--Felony Defendants with Prior Arrests, 1974

(D.C. Superior Court)

RELEASE TYPE			CRIME TYPE															
			HOMICIDE	ASSAULT	SEXASLT	ROBBERY	BURGLARY	LARCENY	FRAUD	PROPERTY	GUN	OTHER WEAPON	GAMBLING	CONSSEX	DRUGS	BAIL	KIDNAP	OTHER
TOTAL	PERCENTAGE	100.0	4.2	12.1	4.2	29.5	21.2	11.1	4.8	0.7	4.5	0.3	1.1	0.1	1.5	2.8	0.2	1.7
	FREQUENCY	2837	119	343	118	836	601	316	135	21	128	9	32	3	43.0	79	5	49
PERSONAL RECOGNIZANCE	PERCENTAGE	38.0	25.2	56.0	39.0	32.2	37.1	36.7	47.4	47.1	43.8	33.3	53.1	0.0	65.1	5.1	40.0	34.7
	FREQUENCY	1079	30	192	46	269	223	116	64	12	56	3	17	0	28	4	2	17
SURETY BOND	PERCENTAGE	34.9	55.5	22.5	28.0	38.9	34.7	32.6	28.1	14.3	32.9	33.3	28.1	66.7	11.7	73.4	60.0	34.7
	FREQUENCY	992	66	77	33	325	208	103	38	3	42	3	9	2	5	58	3	17
CASH BOND	PERCENTAGE	8.8	3.4	3.8	2.5	9.5	9.8	12.7	8.9	9.5	10.1	11.1	3.1	0.0	4.6	16.4	0.0	12.2
	FREQUENCY	249	4	13	3	80	59	40	12	2	13	1	1	0	2	13	0	6
THIRD PARTY	PERCENTAGE	16.2	15.1	15.2	24.6	18.3	15.8	17.4	15.6	14.3	10.2	0.0	0.0	33.3	18.6	3.8	0.0	16.3
	FREQUENCY	459	18	52	29	153	95	55	21	3	13	0	0	1	8	3	0	8
OTHER	PERCENTAGE	2.0	0.8	2.7	5.9	1.0	2.6	0.6	0.0	4.8	3.1	22.2	15.6	0.0	0.0	1.3	0.0	2.0
	FREQUENCY	58	1	9	7	9	16	2	0	1	4	2	5	0	0	1	0	1

Source: PROMIS

Exhibit II-10a

Release Conditions Imposed, by Crime Type--Defendants Without Prior Arrests, 1974
(D.C. Superior Court)

RELEASE TYPE		CRIME TYPE															
		TOTAL	HOMICIDE	ASSAULT	SEXASLT	ROBBERY	BURGLARY	LARCENY	FRAUD	PROPERTY	GUN	OTHER WEAPON	GAMBLING	CONSSEX	DRUGS	BAIL	KIDNAP	OTHER
TOTAL	PERCENTAGE	100.0	0.1	10.5	0.1	0.7	5.0	24.5	3.1	2.0	8.8	1.1	1.6	16.7	23.2	1.0	0.0	1.6
	FREQUENCY	3392	4	357	4	24	168	830	105	69	297	39	53	568	787	34	0	53
PERSONAL RECOGNIZANCE	PERCENTAGE	80.5	75.0	75.6	50.0	70.8	70.8	81.9	81.9	71.0	83.8	79.5	77.4	75.4	88.9	32.4	0.0	83.0
	FREQUENCY	2730	3	270	2	17	119	680	86	49	249	31	41	428	700	11	0	44
SURETY BOND	PERCENTAGE	6.8	25.0	9.2	0.0	12.5	8.9	7.1	6.7	8.7	6.8	5.1	20.8	6.4	3.1	32.4	0.0	5.7
	FREQUENCY	231	1	33	0	3	15	59	7	6	20	2	11	36	24	11	0	3
CASH BOND	PERCENTAGE	4.8	0.0	5.3	25.0	4.2	5.4	3.2	4.8	2.8	3.3	0.0	0.0	10.3	2.6	26.5	0.0	3.8
	FREQUENCY	163	0	19	1	1	9	27	5	2	10	0	0	58	20	9	0	2
THIRD PARTY	PERCENTAGE	6.9	0.0	7.8	25.0	12.5	11.3	6.9	6.7	14.5	5.1	12.8	0.0	8.1	4.6	5.9	0.0	7.5
	FREQUENCY	233	0	28	1	3	19	57	7	10	15	5	0	46	36	2	0	4
OTHER	PERCENTAGE	1.1	0.0	1.9	0.0	0.0	3.6	0.8	0.0	2.8	1.0	2.6	1.9	0.0	0.9	2.9	0.0	0.0
	FREQUENCY	35	0	7	0	0	6	7	0	2	3	1	1	0	7	1	0	0

Source: PROMIS

Exhibit II-10b

Release Conditions Imposed, by Crime Type--Misdemeanor Defendants with Prior Arrests, 1974
(D.C. Superior Court)

RELEASE TYPE		CRIME TYPE															
		TOTAL	HOMICIDE	ASSAULT	SEXASLT	ROBBERY	BURGLARY	LARCENY	FRAUD	PROPERTY	GUN	OTHER WEAPON	GAMBLING	CONSSEX	DRUGS	BAIL-	KIDNAP	OTHER
TOTAL	PERCENTAGE	100.0	0.1	12.5	0.2	0.6	7.7	29.7	2.0	2.7	186.0	1.8	1.2	10.2	17.8	5.0	0.0	1.9
	FREQUENCY	2853	2	358	5	16	221	848	58	77	6.5	52	34	291	507	143	0	55
PERSONAL RECOGNIZANCE	PERCENTAGE	59.2	50.0	65.9	100.0	50.0	48.4	57.4	53.4	59.7	68.8	59.6	76.5	58.8	71.4	14.0	0.0	56.4
	FREQUENCY	1690	1	236	5	8	107	487	31	46	128	31	26	171	362	20	0.0	31
SURETY BOND	PERCENTAGE	18.4	50.0	15.0	0.0	31.3	19.5	19.7	15.5	14.3	18.3	21.1	14.7	13.4	11.8	51.8	0.0	21.8
	FREQUENCY	525	1	54	0	5	43	167	9	11	34	11	5	39	60	74	0	12
CANS BOND	PERCENTAGE	8.8	0.0	5.1	0.0	0.0	10.8	9.9	12.1	9.1	4.3	3.8	5.9	15.5	4.8	17.5	0.0	10.9
	FREQUENCY	252	0	18	0	0	24	84	7	7	8	2	2	45	24	25	0	6
THIRD PARTY	PERCENTAGE	11.2	0.0	10.3	0.0	18.8	16.3	10.0	13.8	11.7	7.5	15.4	2.9	12.4	11.0	14.0	0.0	10.9
	FREQUENCY	319	0	37	0	3	36	85	8	9	14	8	1	36	56	20	0	6
OTHER	PERCENTAGE	2.4	0.0	3.7	0.0	0.0	5.0	3.0	5.2	5.2	1.1	0.0	0.0	0.0	1.0	2.8	0.0	0.0
	FREQUENCY	67	0	13	0	0	11	25	3	4	2	0	0	0.0	5	4	0	0

Source: PROMIS

2. Cases Pending

Closely related to the defendant's prior criminal record is whether he has a case pending at the time of the bail decision. A pending case demonstrates the defendant's possible criminal proclivities, and the effect is aggravated by the fact that his alleged illegal activities occurred within a short time span. This may present to the judge a negative image of how capably the defendant can control his antisocial behavior. Exhibits II-11a and II-11b report how a pending case affected release conditions.

These exhibits indicate that relative to others, defendants with pending cases were more than twice as likely to be denied personal recognizance release in favor of a financial bond. Interestingly, a pending case seemed to reduce the chances of third-party release for felony defendants, but increased the chance for misdemeanor defendants. This apparent inconsistency is explored further in a multivariate context in Chapter III.

3. Age of Defendant

Consistent with national crime figures, the Washington adult criminal courts are dominated by younger defendants. Exhibits II-12a and II-12b show that over half of all accused felons are between 18 and 25, and that only 16 percent are over 35 years of age. With the defendants bunched so tightly at the lower end of the age spectrum, it is difficult to detect a meaningful relationship between defendant age and the pretrial release decision. The exhibits indicate that little variation exists with respect to age. This lack of variation is not completely surprising, since it would be difficult to offer rational ex-

Exhibit II-11a

Release Type Imposed, by Pending Case Status--1974 Felonies
(D.C. Superior Court)

RELEASE STATUS	PENDING CASE STATUS		
	TOTAL	NONE PENDING	AT LEAST ONE PENDING
TOTAL			
PERCENTAGE	100.0	82.7	17.3
FREQUENCY	4631	3832	799
PERSONAL RECOGNIZANCE			
PERCENTAGE	44.8	49.7	21.7
FREQUENCY	2076	1903	173
SURETY BOND			
PERCENTAGE	28.9	24.4	50.4
FREQUENCY	1338	935	403
CASH BOND			
PERCENTAGE	7.4	6.2	13.6
FREQUENCY	346	237	109
THIRD PARTY			
PERCENTAGE	16.9	17.8	12.6
FREQUENCY	782	681	101
OTHER			
PERCENTAGE	1.9	2.1	1.6
FREQUENCY	89	76	13

Source: PROMIS

Exhibit II-11b

Release Type Imposed, by Pending Case Status--1974 Misdemeanors
(D.C. Superior Court)

RELEASE TYPE	PENDING CASE STATUS		
	TOTAL	NONE PENDING	AT LEAST ONE PENDING
TOTAL			
PERCENTAGE	100.0	88.3	11.7
FREQUENCY	6249	5517	732
PERSONAL RECOGNIZANCE			
PERCENTAGE	70.8	75.4	35.9
FREQUENCY	4423	4160	263
SURETY BOND			
PERCENTAGE	12.2	9.2	34.3
FREQUENCY	757	506	251
CASH BOND			
PERCENTAGE	6.6	5.7	13.9
FREQUENCY	415	313	102
THIRD PARTY			
PERCENTAGE	8.8	8.2	13.7
FREQUENCY	552	452	100
OTHER			
PERCENTAGE	1.6	1.5	2.1
FREQUENCY	102	86	16

Source: PROMIS

Exhibit II-12a

Release Conditions Imposed, by Defendant Age--1974 Felonies
(D.C. Superior Court)

RELEASE TYPE	AGE INTERVAL						
	TOTAL	18-21	22-25	26-30	31-35	36-73	UNKNOWN
TOTAL							
PERCENTAGE	100.0	30.4	24.0	17.2	8.2	15.9	4.3
FREQUENCY	4631	1409	1111	796	378	738	199
PERSONAL RECOGNIZANCE							
PERCENTAGE	44.8	45.8	43.2	40.7	46.6	51.9	33.7
FREQUENCY	2076	646	480	324	176	383	67
SURETY BOND							
PERCENTAGE	28.9	25.4	33.9	32.3	29.6	26.4	20.1
FREQUENCY	1338	358	376	257	112	195	40
CASH BOND							
PERCENTAGE	7.4	7.0	8.8	9.8	6.9	5.2	3.5
FREQUENCY	346	99	98	78	26	38	7
THIRD PARTY							
PERCENTAGE	16.9	20.4	12.7	15.5	13.8	13.1	40.7
FREQUENCY	782	288	141	123	52	97	81
OTHER							
PERCENTAGE	1.9	1.3	1.5	1.8	3.2	3.3	2.0
FREQUENCY	89	18	16	14	12	25	4

Source: PROMIS

CONTINUED

1 OF 3

Exhibit II-12b

Release Conditions Imposed, by Defendant Age--1974 Misdemeanors
(D.C. Superior Court)

RELEASE TYPE	AGE INTERVAL						
	TOTAL	18-21	22-25	26-30	31-35	36-73	UNKNOWN
TOTAL							
PERCENTAGE	100.0	29.8	23.2	17.7	9.4	18.7	1.3
FREQUENCY	6249	1860	1452	1103	586	1169	79.0
PERSONAL RECOGNIZANCE							
PERCENTAGE	70.8	74.1	68.5	69.7	69.3	70.7	60.8
FREQUENCY	4423	1379	994	769	406	827	48
SURETY BOND							
PERCENTAGE	12.2	9.1	12.7	14.4	13.6	13.0	16.4
FREQUENCY	257	169	184	159	80	152	13
CASH BOND							
PERCENTAGE	6.6	6.3	8.1	6.4	5.5	6.0	11.4
FREQUENCY	415	117	117	70	32	70	9
THIRD PARTY							
PERCENTAGE	8.8	9.5	9.9	8.5	8.4	6.8	11.4
FREQUENCY	552	177	144	94	49	79	9
OTHER							
PERCENTAGE	1.6	1.1	0.9	1.0	3.3	3.5	0.0
FREQUENCY	102	18	13	11	19	41	0

Source: PROMIS

planations of why age should be a major factor, after controlling for intervening variables, in the judge's pretrial release decision.

Felony defendants over 35 were slightly more likely to be released on their own recognizance than the defendant population as a whole (52 percent to 45 percent), possibly a reflection of closer community ties among older defendants. Rates for the other categories showed negligible variation. If the rates had been controlled for charge simultaneously with age, then even these slight differences would probably decrease sharply. For example, if younger defendants are committing more serious crimes, the nature of the charge rather than the defendant's age may be the factor influencing pretrial release conditions.

4. Race

Inferences concerning the effect of race should be made cautiously, due to the lack of statistical control for variables that may be related to both race and release conditions. Nevertheless, Exhibit II-13a indicates that, in felony cases, whites and blacks are about equally likely to receive nonfinancial release. However, the table indicates that among the nonfinancial releases, third-party custody is more common for blacks than for whites, perhaps as a result of Bonabond policies. In misdemeanor cases in contrast, white defendants are more likely than blacks to receive nonfinancial release in general, according to Exhibit II-13b. Controlling for type of charge and employment

Exhibit II-13a

Release Type Imposed, by Defendant Race--1974 Felonies
(D.C. Superior Court)

RELEASE TYPE		RACE		
		TOTAL	NONWHITE	WHITE
TOTAL				
	PERCENTAGE	100.0	94.8	5.2
	FREQUENCY	4583	4345	238
PERSONAL RECOGNIZANCE				
	PERCENTAGE	44.8	44.5	50.0
	FREQUENCY	2051	1932	119
SURETY BOND				
	PERCENTAGE	28.9	29.0	26.9
	FREQUENCY	1327	1263	64
CASH BOND				
	PERCENTAGE	7.5	7.4	8.4
	FREQUENCY	344	324	20
THIRD PARTY				
	PERCENTAGE	16.8	17.1	12.2
	FREQUENCY	772	743	29
OTHER				
	PERCENTAGE	2.0	2.0	2.6
	FREQUENCY	89	83	6

Source: PROMIS

Exhibit II-13b

Release Type Imposed, by Defendant Race--1974 Misdemeanors
(D.C. Superior Court)

RELEASE TYPE	RACE		
	TOTAL	NONWHITE	WHITE
TOTAL			
PERCENTAGE	100.0	85.1	14.9
FREQUENCY	6103	5196	907
PERSONAL RECOGNIZANCE			
PERCENTAGE	70.6	69.6	76.0
FREQUENCY	4308	3619	689
SURETY BOND			
PERCENTAGE	12.2	12.9	8.1
FREQUENCY	747	674	73
CASH BOND			
PERCENTAGE	6.7	6.3	8.6
FREQUENCY	408	330	78
THIRD PARTY			
PERCENTAGE	8.8	9.2	6.4
FREQUENCY	538	480	58
OTHER			
PERCENTAGE	1.6	1.8	1.0
FREQUENCY	102	93	9

Source: PROMIS

status would clearly be useful in understanding the racial factor more fully; such controls are employed in the multivariate analysis reported in Appendix A.

5. Sex

Since only 10 percent of the defendants in this analysis are female, small cell sizes make it difficult to infer the effect of defendant sex on the distribution of pretrial release conditions. Nevertheless, Exhibit II-14 offers some interesting findings. Women charged with felonies were more likely than men to receive nonfinancial release, either on personal recognizance or to a third-party custodian. Yet, when one examines misdemeanor cases, both sexes received PR release at the same rate: 71 percent. Why do female felony defendants receive apparently preferential treatment in felony cases? Why not in misdemeanors? Does the difference reflect judicial chivalry or the effect of different crime types? An investigation of such questions is deferred to the multivariate analysis in Chapter III.

6. Employment Status

Perhaps the most striking feature of Exhibits II-15a and II-15b is that among all defendants for whom employment status was recorded, more than half were unemployed. With respect to pretrial release decisions, however, the tables raise doubt as to how strongly judges are considering employment stability in their release decisions. If this factor were being utilized systematically, we would expect a much higher PR rate for

Exhibit II-14

Release Type Imposed, by Defendant Sex, 1974

(D.C. Superior Court)

RELEASE TYPE	FELONIES			MISDEMEANORS		
	TOTAL	MALE	FEMALE	TOTAL	MALE	FEMALE
TOTAL						
PERCENTAGE	100.0	90.9	9.1	100.0	81.4	18.6
FREQUENCY	4631	4210	421	6249	5084	1165
PERSONAL RECOGNIZANCE						
PERCENTAGE	44.8	43.6	57.2	70.8	70.9	70.1
FREQUENCY	2076	1835	241	4423	3606	817
SURETY BOND						
PERCENTAGE	28.9	29.8	19.7	12.2	12.7	9.3
FREQUENCY	1338	1255	83	757	649	108
CASH BOND						
PERCENTAGE	7.4	7.6	6.2	6.6	5.8	10.2
FREQUENCY	346	320	26	415	296	119
THIRD PARTY						
PERCENTAGE	16.9	12.0	15.4	8.8	8.6	9.7
FREQUENCY	782	717	65	552	439	113
OTHER						
PERCENTAGE	1.9	1.9	1.4	1.6	1.9	0.7
FREQUENCY	89	83	6	102	94	8

Source: PROMIS

Exhibit II-15a

Release Conditions Imposed, by Defendant Employment Status--1974 Felonies
(D.C. Superior Court)

RELEASE TYPE	EMPLOYMENT STATUS			
	TOTAL	EMPLOYED	UNEMPLOYED	UNKNOWN
TOTAL				
PERCENTAGE	100.0	38.6	48.9	12.5
FREQUENCY	4631	1786	2265	580
PERSONAL RECOGNIZANCE				
PERCENTAGE	44.8	52.6	40.4	38.1
FREQUENCY	2076	940	915	221
SURETY BOND				
PERCENTAGE	28.9	23.7	31.3	35.5
FREQUENCY	1338	413	709	206
CASH BOND				
PERCENTAGE	7.4	7.1	7.6	7.9
FREQUENCY	346	127	173	46
THIRD PARTY				
PERCENTAGE	16.9	15.0	18.5	16.6
FREQUENCY	782	268	418	96
OTHER				
PERCENTAGE	1.9	1.6	2.3	2.0
FREQUENCY	89	28	50	11

Source: PROMIS

Exhibit II-15b

Release Conditions Imposed, by Defendant Employment Status--1974 Misdemeanors
(D.C. Superior Court)

RELEASE STATUS	EMPLOYMENT STATUS			
	TOTAL	EMPLOYED	UNEMPLOYED	UNKNOWN
TOTAL				
PERCENTAGE	100.0	47.2	41.2	11.6
FREQUENCY	6249	2950	2574	725
PERSONAL RECOGNIZANCE				
PERCENTAGE	70.8	80.7	61.1	64.8
FREQUENCY	4423	2381	1572	470
SURETY BOND				
PERCENTAGE	12.2	8.4	15.8	14.2
FREQUENCY	757	246	408	103
CASH BOND				
PERCENTAGE	6.6	4.4	8.9	7.9
FREQUENCY	415	129	229	57
THIRD PARTY				
PERCENTAGE	8.8	5.6	12.0	10.9
FREQUENCY	552	164	309	79
OTHER				
PERCENTAGE	1.6	1.0	2.1	2.2
FREQUENCY	102	30	56	16

Source: PROMIS

employed defendants than for their jobless counterparts. Yet the advantage enjoyed by employed defendants is less than 10 percentage points over the entire defendant population, for both felons and misdemeanants. It is worth noting that nearly one-third of the unemployed defendants are required to post surety bonds. Since unemployment usually indicates a depleted financial condition, it is likely that those defendants stand little chance of obtaining release.

7. Residence

Also an indicator of community ties, residential stability could be expected to affect a defendant's chance for PR release. In fact, however, Exhibits II-16a and II-16b show that local residents and those from outside the metropolitan area are treated almost identically in both felony and misdemeanor cases. One could speculate that, in spite of the law, judges do not believe that residence in the community actually reduces the likelihood of flight. Alternatively, one could speculate that nonlocal defendants share some positive characteristics that make them equally good risks in judges' eyes, despite the lack of a local address. The effect of local residence is considered in more detail in the multivariate analysis reported in Chapter III.

E. OBTAINING RELEASE

For defendants assigned financial conditions, an important issue is their ability to satisfy those conditions and obtain release. Unfortunately, this outcome is not routinely communicated to the U.S. Attorney's Office; hence, it is not recorded in PROMIS.

Exhibit II-16a

Release Conditions Imposed, by Defendant Residence--1974 Felonies
(D.C. Superior Court)

RELEASE TYPE	RESIDENCE			
	TOTAL	DC	MD/VA	OTHERS
TOTAL				
PERCENTAGE	100.0	56.3	29.5	14.2
FREQUENCY	4631	2606	1367	658
PERSONAL RECOGNIZANCE				
PERCENTAGE	44.8	44.2	46.1	44.8
FREQUENCY	2076	1151	630	295
SURETY BOND				
PERCENTAGE	28.9	28.5	28.5	31.3
FREQUENCY	1338	742	390	206
CASH BOND				
PERCENTAGE	7.4	7.2	7.5	8.6
FREQUENCY	346	188	102	56
THIRD PARTY				
PERCENTAGE	16.9	18.2	16.1	13.4
FREQUENCY	782	474	220	88
OTHER				
PERCENTAGE	1.9	2.1	1.8	2.1
FREQUENCY	89	51	25	13

Source: PROMIS

Exhibit II-16b

Release Conditions Imposed, by Defendant Residence--1974 Misdemeanors
(D.C. Superior Court)

RELEASE TYPE	RESIDENCE			
	TOTAL	DC	MD/VA	OTHERS
TOTAL				
PERCENTAGE	100.0	48.6	30.3	21.1
FREQUENCY	6249	3039	1893	1317
PERSONAL RECOGNIZANCE				
PERCENTAGE	70.8	69.6	70.7	73.7
FREQUENCY	4423	2114	1339	970
SURETY BOND				
PERCENTAGE	12.2	13.1	12.0	9.4
FREQUENCY	757	398	228	131
CASH BOND				
PERCENTAGE	6.6	6.5	6.1	7.9
FREQUENCY	415	196	114	104
THIRD PARTY				
PERCENTAGE	8.8	9.1	9.6	7.0
FREQUENCY	552	278	182	92
OTHER				
PERCENTAGE	1.6	1.8	1.5	1.6
FREQUENCY	102	53	29	20

Source: PROMIS

However, for this study the release outcome was hand-collected from court records for a random sample of defendants assigned financial release conditions. Although an attempt was made to collect data for a 25-percent sample, missing and ambiguous court records reduced the actual sampling fraction to 22.1 percent. Based on this sample, Exhibits II-17a and II-17b report, separately for felonies and misdemeanors, the release outcomes for defendants assigned cash and surety bond. Bond amounts have been categorized as being above or below the respective median amounts for cash and surety bond. These tables confirm two findings that might have been expected.

First, defendants succeed in posting cash bond far more often than they succeed in posting surety bond. Among felony cases, the 73 percent overall release rate among cash bond defendants exceeds by 28 percentage points the rate for surety bond defendants. Misdemeanor cases exhibit a 24-point advantage for cash bond defendants. The differentials reflect the relative ease of raising the 10 percent deposit required for cash bond, compared with raising the full amount from one's own sources or from a bondsman.

F. PRETRIAL MISCONDUCT

1. Rearrests

As noted in Chapter I, a major concern of both the city's residents and criminal justice officials has been the problem of defendants committing crimes while awaiting trial. The problem was believed serious enough to merit inclusion of the

Exhibit II-17a

Release Outcome, by Type of Financial Release Condition--1974 Felonies

(D.C. Superior Court)

Release Outcome	Release Conditions					
	Surety Bond			Cash Bond		
	All Amounts	Below Median ($2500)	Above Median ($2500)	All Arrests	Below Median ($1500)	Above Median ($1500)
Release Obtained						
Percentage	45.2	55.4	40.8	73.1	100.0	71.6
Frequency	137	51	86	57	4	53
Release Not Obtained						
Percentage	54.8	44.6	59.2	26.9	0.0	28.4
Frequency	166	41	125	21	0	21
Total						
Percentage	100.0	100.0	100.0	100.0	100.0	100.0
Frequency	303	92	211	78	4	74

Source: D.C. Superior Court records.

Exhibit II-17b

Release Outcome, by Type of
Financial Release Condition--1974 Misdemeanors

(D.C. Superior Court)

Release Outcome	Release Conditions					
	Surety Bond			Cash Bond		
	All Amounts	Below Median ($2500)	Above Median ($2500)	All Amounts	Below Median ($1500)	Above Median ($1500)
Release Obtained						
Percentage	56.1	59.3	47.8	80.2	86.8	69.7
Frequency	92	70	22	69	46	23
Release Not Obtained						
Percentage	43.9	40.7	52.2	19.8	13.2	30.3
Frequency	72	48	24	17	7	10
Total						
Percentage	100.0	100.0	100.0	100.0	100.0	100.0
Frequency	164	118	46	86	53	33

Source: D.C. Superior Court Records

preventive detention provision in the Court Reform Act of 1970, and it remains a topic of public concern today. Exhibits II-18a and II-18b report the rates at which accused felons and misdemeanants were rearrested, controlling for the type of release they obtained. For obvious reasons, defendants who were unable to obtain financial release are not included in any of the following exhibits describing pretrial misconduct rates. Rearrests for bail violations are not included in Exhibits II-18 and II-19.

Among felony defendants on pretrial release during 1974, 13 percent were rearrested before disposition of their cases; among alleged misdemeanants, the estimated rate was 7 percent.[6] The difference may reflect less proclivity toward crime among misdemeanants, or the fact that misdemeanor cases are disposed of more quickly, or both. The felony defendants released on cash bond were by far the least dependable--25 percent were rearrested, about twice the rate for defendants receiving non-financial release. Given the high-risk nature of the defendants selected by the major third-party custodians, it is not surprising that, particularly in misdemeanor cases, their rearrest rate was relatively high.

Many would argue that these exhibits overstate the dimensions of the pretrial crime problem, and that a more accurate

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[6] It is likely that felony defendants are more likely to be rearrested for felonies, and misdemeanor defendants for misdemeanors; however, specialization is far from complete. Kristen Williams, The Scope and Prediction of Recidivism, PROMIS Research Publication no. 10, p. VI-2 in describing general (not necessarily pre-trial) rearrest over several years, reports: "Twenty-two percent of the persons arrested (initially) for a misdemeanor had a later arrest for a felony, and 28 percent had a later arrest for a misdemeanor. Of the felony panel defendants, 29 percent had a later arrest for a felony and 22 percent had a later arrest for a misdemeanor."

Exhibit II-18a

Pretrial Rearrest Frequency, by Type of Release Obtained--1974 Felonies

(D.C. Superior Court)

PRETRIAL CONDUCT	METHOD OF OBTAINING RELEASE					
	PERSONAL RECOGNIZANCE	SURETY BOND	CASH BOND	THIRD PARTY	OTHER	AGGREGATE*
NOT REARRESTED						
PERCENTAGE	89.3	81.8	75.4	86.2	95.5	86.6
FREQUENCY	1853	112	43	674	85	3313
REARRESTED						
PERCENTAGE	10.7	18.2	24.6	13.8	4.5	13.4
FREQUENCY	223	25	14	108	4	511
TOTAL						
PERCENTAGE	100.0	100.0	100.0	100.0	100.0	100.0
FREQUENCY	2076	137	57	782	89	3825

Source: PROMIS and D.C. Superior Court records.

*In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.

Exhibit II-18b

Pretrial Rearrest Frequency, by Type of Release Obtained--1974 Misdemeanors

(D.C. Superior Court)

PRETRIAL CONDUCT	METHOD OF OBTAINING RELEASE					
	PERSONAL RECOGNIZANCE	SURETY BOND	CASH BOND	THIRD PARTY	OTHER	AGGREAGTE*
NOT REARRESTED						
PERCENTAGE	94.3	93.5	91.3	95.1	92.2	93.2
FREQUENCY	4173	86	63	478	94	5419
REARRESTED						
PERCENTAGE	5.7	6.5	8.7	14.9	7.8	6.8
FREQUENCY	250	6	6	82	8	394
TOTAL						
PERCENTAGE	100.0	100.0	100.0	100.0	100.0	100.0
FREQUENCY	4423	92	69	552	102	5814

Source: PROMIS and D.C. Superior Court records.

*In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.

picture would be obtained by counting only pretrial rearrests that lead to conviction. This is done for a subset of cases--each defendant's first 1974 case--in Exhibits II-19a and II-19b. The estimated aggregate rates reflect the fact that fewer than half of all pretrial rearrests lead to conviction. Unfortunately, the small cell sizes that result preclude meaningful comparisons of rates across release types.

2. Failure to Appear

The extent of failure of released defendants to appear for trial is examined in Exhibits II-20a and II-20b. Those exhibits report overall nonappearance rates of about 11 percent in both felony and misdemeanor cases. For two reasons, it is somewhat surprising that the misdemeanor rate is as high as the felony rate. First, it is sometimes argued that since felony cases present more severe potential sentences, felony defendants have a greater incentive to flee. Second, it is argued that felony cases, which take longer to dispose of, present greater opportunities to flee. Our results, which are consistent with results obtained by others, do not support either of these contentions.[7]

Among felony defendants, the alternative forms of release do not generate widely divergent nonappearance rates; however, defendants released on cash bond do exhibit a somewhat higher

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[7]Equal rates for felony and misdemeanor cases, and higher rates for the less serious "violation" category, were found by S. Andrew Schaffer, Bail and Parole Jumping in Manhattan in 1967 (New York: Vera Institute of Justice, 1970): 25-28.

Exhibit II-19a

Pretrial Rearrest and Conviction Frequency, by Type of Release Obtained--Felonies†

(D.C. Superior Court)

PRETRIAL CONDUCT	METHOD OF OBTAINING RELEASE					
	PERSONAL RECOGNIZANCE	SURETY BOND	CASH BOND	THIRD PARTY	OTHER	AGGREGATE*
NOT REARRESTED AND CONVICTED						
PERCENTAGE	95.5	92.5	97.0	94.4	98.5	94.9
FREQUENCY	1651	99	32	603	65	2912
REARRESTED AND CONVICTED						
PERCENTAGE	4.5	7.5	3.0	5.6	1.5	5.1
FREQUENCY	77	8	1	36	1	155
TOTAL						
PERCENTAGE	100.0	100.0	100.0	100.0	100.0	100.0
FREQUENCY	1728	107	33	639	66	3067

Source: PROMIS and D.C. Superior Court records.

*In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.

†For a defendant having more than one 1974 case, only his conduct during the first case is counted in this table.

Exhibit II-19b

Pretrial Rearrest and Conviction Frequency, by Type of Release Obtained--1974 Misdemeanors†

(D.C. Superior Court)

PRETRIAL CONDUCT	METHOD OF OBTAINING RELEASE					
	PERSONAL RECOGNIZANCE	SURETY BOND	CASH BOND	THIRD PARTY	OTHER	AGGREGATE*
NOT REARRESTED AND CONVICTED						
PERCENTAGE	97.5	96.3	92.2	95.0	97.4	97.0
FREQUENCY	3783	52	47	400	74	4705
REARRESTED AND CONVICTED						
PERCENTAGE	2.5	3.7	7.8	5.0	2.6	3.0
FREQUENCY	97	2	4	21	2	147
TOTAL						
PERCENTAGE	100.0	100.0	100.0	100.0	100.0	100.0
FREQUENCY	3880	54	51	421	76	4852

Source: PROMIS and D.C. Superior Court records.

*In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.

†For a defendant having more than one 1974 case, only his conduct during the first case is counted in this table.

Exhibit II-20a

Frequency of Failure to Appear, by Type of Release Obtained--1974 Felonies

(D.C. Superior Court)

PRETRIAL CONDUCT	METHOD OF OBTAINING RELEASE					
	PERSONAL RECOGNIZANCE	SURETY BOND	CASH BOND	THIRD PARTY	OTHER	AGGREGATE*
DID NOT FAIL TO APPEAR						
PERCENTAGE	89.6	89.8	87.7	88.4	94.4	89.4
FREQUENCY	1860	123	50	691	84	3418
FAILED TO APPEAR						
PERCENTAGE	10.4	10.2	12.3	11.6	5.6	10.6
FREQUENCY	216	14	7	91	5	407
TOTAL						
PERCENTAGE	100.0	100.0	100.0	100.0	100.0	100.0
FREQUENCY	2076	137	57	782	89	3825

Source: PROMIS and D.C. Superior Court records.

*In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which those cases were sampled.

Exhibit II-20b

Frequency of Failure to Appear, by Type of Release Obtained--1974 Misdemeanors

(D.C. Superior Court)

PRETRIAL CONDUCT	METHOD OF OBTAINING RELEASE					
	PERSONAL RECOGNIZANCE	SURETY BOND	CASH BOND	THIRD PARTY	OTHER	AGGREGATE*
DID NOT FAIL TO APPEAR						
PERCENTAGE	90.9	89.1	76.8	81.9	85.3	89.0
FREQUENCY	4020	82	53	452	87	5170
FAILED TO APPEAR						
PERCENTAGE	9.1	10.9	23.2	18.1	14.7	11.0
FREQUENCY	403	10	16	100	15	636
TOTAL						
PERCENTAGE	100.0	100.0	100.0	100.0	100.0	100.0
FREQUENCY	4423	92	69	552	102	5806

Source: PROMIS and D.C. Superior Court records.

*In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.

failure rate. Among misdemeanor defendants, however, a much wider range is observed--cash bond and third-party defendants miss appearances twice as frequently as those released on personal recognizance. This may reflect the fact that among misdemeanor defendants, cash bond and third-party custody are imposed on only exceptionally high risk defendants, e.g., career felons who happen to be arrested for a misdemeanor this time.

Additional insight into the problem of failure to appear can be gained by condidering only "willful" failures to appear, i.e., those followed by arrest for a Bail Reform Act violation or those that prevented disposition of the case as of August 1975.[8] Exhibits II-21a and II-21b report 1974 rates of willful failures to appear for felons and misdemeanants. Under this definition, over half of the nonappearances are apparantly not intentional. Many of the nonwillful failures may be the fault of communication breakdowns between the courts and the defendant. As with arrest leading to conviction, small cell sizes make comparisons across release conditions very tentative. However, those released on personal recognizance were least likely to miss an appearance deliberately--only 35 percent of their failures could be categorized as willful. This is a reassuring finding, since it is hoped that those defendants receiving personal recognizance are the best pretrial risks for

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[8] Receipt of the notice to appear by a defendant who then fails to appear is considered prima facie evidence of willful failure to appear. If the officer who serves the bench warrant finds evidence of receipt, he is expected to rearrest the defendant for Bail Reform Act violation.

Exhibit II-21a

Frequency of Willful Failure to Appear, by Type of Release Obtained--1974 Felonies

(D.C. Superior Court)

PRETRIAL CONDUCT	METHOD OF OBTAINING RELEASE					
	PERSONAL RECOGNIZANCE	SURETY BOND	CASH BOND	THIRD PARTY	OTHER	AGGREGATE*
DID NOT WILLFULLY FAIL TO APPEAR						
PERCENTAGE	96.5	95.3	93.9	95.0	95.5	95.9
FREQUENCY	1668	102	31	607	63	2940
WILLFULLY FAILED TO APPEAR						
PERCENTAGE	3.5	4.7	6.1	5.0	4.5	4.1
FREQUENCY	60	5	2	32	3	127
TOTAL						
PERCENTAGE	100.0	100.0	100.0	100.0	100.0	100.0
FREQUENCY	1728	107	33	639	66	3067

Source: PROMIS and D.C. Superior Court records.

*In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.

Exhibit II-21b

Frequency of Willful Failure to Appear, by Type of Release Obtained--1974 Misdemeanors

(D.C. Superior Court)

PRETRIAL CONDUCT	METHOD OF OBTAINING RELEASE					
	PERSONAL RECOGNIZANCE	SURETY BOND	CASH BOND	THIRD PARTY	OTHER	AGGREGATE*
DID NOT WILLFULLY FAIL TO APPEAR						
PERCENTAGE	97.5	96.3	92.2	95.0	97.4	97.0
FREQUENCY	3783	52	47	400	74	4705
WILLFULLY FAILED TO APPEAR						
PERCENTAGE	2.5	3.7	7.8	5.0	2.6	3.0
FREQUENCY	97	2	4	21	2	147
TOTAL						
PERCENTAGE	100.0	100.0	100.0	100.0	100.0	100.0
FREQUENCY	3880	54	51	421	76	4852

Source: PROMIS and D.C. Superior Court records.

*In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.

future appearance. Only 3.5 percent of all PR felony defendants willfully avoided their required court appearance. Misdemeanants showed an even sharper distinction between willful and involuntary failures. Of the 9 percent overall rate for PR misdemeanants, only 2.5 percent were willful. Cash bond defendants also showed a drastic reduction, from a 23 percent total rate to an 8 percent willful rate.

G. PREVENTIVE DETENTION

Chapter I discussed the puzzling failure to use the preventive detention provision of the 1970 D.C. Court Reform Act. No Exhibits are presented on the use of this provision in 1974, since it was requested only once during the year. Moreover, Exhibit II-22 demonstrates clearly that this provision, intended to protect the community from certain classes of defendants thought to be dangerous, has been seldom used during the past five years. The data do reflect a slight uptrend in its use during the last two years. However, despite the contention cited in Chapter I that a third of all defendants are eligible for detention, the rate at which it is requested has yet to reach 1 percent.

U.S. Attorney Earl J. Silbert, whose office is responsible for requesting preventive detention, has stated that since the 60-day permissible detention period is too short to process most felony cases, he has been reluctant to request it in all but a few cases. He has suggested lengthening the period, enlarging the eligible group to include drug addicts charged with crimes, and rephrasing the law to specify first-degree

Exhibit II-22. Requests for Preventive Detention, 1973-77 (D.C. Superior Court)

Year	No. Prev. Detention Hearings Requested	% of Total Felony Cases
1973	22	.4
1974	1	.0
1975	4	.1
1976	24	.4
1977 (1st 6 months)	15	.6

Source: PROMIS (Prosecutors Management Information System)

murder as a crime making the defendant eligible for detention.[9] Professor William McDonald attributes the dormancy of preventive detention to the prosecutor's assumption that judges will use high financial bond to detain dangerous defendants unofficially, saving both court and prosecutor the burden of a preventive detention hearing.[10]

Recent legislation, passed by the U.S. House of Representatives and currently under consideration by the U.S. Senate, includes amendments to existing law that would lengthen the permissible detention period and broaden eligibility criteria, as suggested

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[9]Earl J. Silbert, "Pre-trial Detention: Trying to Find a Common Sense Solution," The Washington Post, April 8, 1976: Md. 2.

[10]William F. McDonald, "Testimony to U.S. Senate Subcommittee on the District of Columbia regarding H.R. 7747," February 6, 1978: 5-6.

by U.S. Attorney Silbert. Some of the results reported in the next chapter of this report are pertinent to the legislation and provide a test of McDonald's hypothesis.

This chapter has provided a statistical overview of the pretrial release process in the District of Columbia. Some of the questions stimulated by this overview are examined in a multivariate analysis in Appendix A and summarized in the next chapter.

III. MULTIVARIATE ANALYSIS OF PRETRIAL RELEASE AND MISCONDUCT IN THE DISTRICT OF COLUMBIA

Chapter II presented a quantitative description of pretrial release in the District of Columbia. It also indicated the size of the pretrial misconduct problem, as measured by the rates at which defendants fail to appear or are rearrested. Nevertheless, statistics such as those in Chapter II often raise nearly as many questions as they answer; by themselves, they can even encourage erroneous conclusions.

For example, Exhibit II-14 reported that a female felony defendant was nearly one-third more likely than a male felony defendant to be released on personal recognizance. Does this demonstrate chivalry (or sexism) by District of Columbia judges, or does it indicate that because of the crimes they commit, female defendants are considered better risks than males?

As another example, Exhibits II-18a and II-20a indicate that felony defendants released on cash bond are more likely than those on personal recognizance to be rearrested or to fail to appear for trial. Based on those results, should we advocate increased use of release on recognizance as a way to reduce pretrial flight, or do we conclude that judges underestimated the misconduct potential of the cash bond defendants and should have required even higher amounts?

Both examples illustrate the difficulty of reaching conclusions when causal variables--sex and charge in one case, and defendant characteristics and bond amount in the other--

interact to determine a result, such as pretrial behavior. We could study the first question by tabulating release type by crime type, as in Exhibits II-3a and II-3b, separately for males and females. Sex would then be "held constant," but four tables would be needed instead of two. The required number of tables explodes if we try to hold constant simultaneously such variables as prior arrests, prior failures to appear, local and nonlocal residence, employment status, and all the other variables that are often thought to work together in explaining pretrial behavior.

The statistical techniques for learning how a group of explanatory variables determine a dependent variable are often lumped together under the title "multivariate analysis." Perhaps the most popular of these techniques is multiple regression analysis, which is usually appropriate when the dependent variable can theoretically take on any value. Another technique, called probit analysis, is often used when the dependent variable can take on only a few values; an example is a variable that equals one if a released defendant fails to appear, and zero otherwise.

To supplement the description in Chapter II, we performed several multivariate analyses of 1974 PROMIS data, which are reported in detail in Appendix A and summarized in this chapter. They were designed to study the following aspects of pretrial

release in the District of Columbia:

Pretrial Release Conditions:

- How does crime type affect pretrial release decisions?
- How do the defendants' histories of prior arrests and failures to appear affect pretrial release decisions?
- What defendant socioeconomic characteristics affect pretrial release decisions?
- How uniformly do arraignment judges set pretrial release conditions?
- Does the likelihood of conviction or the possible sentence affect pretrial release conditions?
- Are pretrial release conditions affected by capacity constraints in the detention facility?

Obtaining Release Under Financial Conditions

- Does a high bond amount prevent a defendant from obtaining release?
- Is the release probability increased if the defendant may post only 10 percent of the bond, rather than a surety bond for the entire amount?
- What characteristics of the defendant and crime determine whether a required bond is actually posted?

Pretrial Misconduct

- Do high bonds and special supervision (by a bondsman or third-party custodian) discourage failure to appear for trial and pretrial rearrests?
- Do defendant and case characteristics used in setting release conditions actually predict failure to appear or future crimes?
- Does a high likelihood of conviction or a high possible sentence encourage failure to appear?

Probit analysis was used to study the following variables: the financial-nonfinancial decision, the choice between cash and surety bond, the choice between personal recognizance and

third-party forms of nonfinancial release, pretrial rearrest, and failure to appear. Ordinary least-squares regression analysis was applied to the determination of bond amount, a continuous dependent variable. The reader is referred to Appendix A for details. Before summarizing the results of these analyses, it is useful to discuss some results of previous research on these questions.

A. EMPIRICAL RESEARCH ON THE PRETRIAL RELEASE DECISION

Besides the institutional studies of pretrial release cited in Chapter I, empirical studies of various pretrial release issues have been conducted since the 1930s. The reader is referred to a 1975 evaluation by the National Center for State Courts for a comprehensive review of this literature,[1] and to Chapter IV for a discussion of others' results on pretrial release issues that are beyond the immediate scope of this report. However, to put our analysis in perspective, it is helpful to discuss a few studies that are especially closely related to ours in terms of questions addressed, methodology employed, or jurisdiction studied.

In 1932, as part of a comprehensive review of criminal justice administration in Portland, Oregon, Morse and Beattie tabulated data on nearly 1,800 felony cases to examine relationships between case characteristics and pretrial release

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[1] An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs (Denver, Colo.: National Center for State Courts, 1975).

status.[2] Generally, their tables show that high bail was set in cases involving serious charges, such as robbery and sex crimes. In addition, cases in which high bail was set were carried further through the criminal justice process and ended in conviction more frequently than other cases. They hypothesized, but could not test, relationships between a common set of characteristics--weight of evidence, community ties, prior record, and aggravating characteristics of the crime--and both imposition of high bail and eventual conviction.

During the 1950s, study teams directed by Caleb Foote interviewed court officials and tabulated data from court records in Philadelphia and New York to learn what factors determine release conditions and what effect those conditions have on eventual case outcome.[3] In both studies, the crime charged and the prosecutor's recommendation were found to be the primary determinants of release conditions; data on defendants' community ties were seldom even collected. As one would expect, they found that the proportion of defendants able to post bond decreased as bond amount increased. They did not examine whether

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[2] Wayne L. Morse and Ronald H. Beattie, "Survey of the Administration of Criminal Justice in Oregon, Report no. 1: Final Report on 1,771 Felony Cases in Multnomah County," Oregon Law Review 11, no. 4 (Supplement) (June 1932): 86-117, 148-50.

[3] See Caleb Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia," University of Pennsylvania Law Review 103 (1954): 1031-79. See also Caleb Foote, "The Administration of Bail in New York City," University of Pennsylvania Law Review 106 (1958): 693-730.

the defendants for whom the highest bonds were set did in fact present the greatest risk of misconduct if they managed to obtain release. Moreover, although they found that defendants who could not obtain release were convicted more frequently and sentenced more harshly than other defendants, they could not conclude whether those relationships arose from cause and effect, or were the joint result of adverse defendant and case characteristics.

Literally scores of empirical studies, of varying degrees of soundness and sophistication, were incorporated in evaluations of bail reform projects.[4] The first of these, and the only major one based on a controlled experiment, was a 1963 evaluation of the Manhattan Bail Project.[5] This study reported that defendants in the experimental group, who were recommended for personal recognizance release based on verified information on their community ties, were in fact released at a 60-percent rate. This rate was four times as high as the rate in a control group that contained defendants equally well qualified according to the project criteria but not recommended. The study reported an impressively low nonappearance rate, just over 1 percent,

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4 See National Center for State Courts, An Evaluation of Policy Related Research: 36-41, and 117-128 for references to these.

5 Charles Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," New York University Law Review 38 (1963): 67-95.

among the first 250 defendants released following a recommendation. These results demonstrated clearly that judges respond to release recommendations based on community-ties criteria. However, since the control group did not include defendants who did not satisfy the Vera criteria, the experiment permits no inference about whether the criteria effectively discriminate between good risks and poor risks. It seems reasonable to infer that the Vera supervision of released defendants in the experimental group accounts for the group's impressive rate of appearance.

Manhattan data were also used in a later study by Schaffer,[6] who attempted to relate nonappearance to crime type, release conditions, community-ties indicators, and disposition time for the case. He found that persons released on personal recognizance following a positive recommendation had a nonappearance rate of 9.4 percent; less than half the rate for those released despite an adverse recommendation. This reflects a positive correlation between the recommendation criteria and the risk a defendant presents, but does not identify criteria in use that lack predictive power, or potentially useful additional criteria. Schaffer speculated, however, that one negative attribute, suspected drug addiction, should be added to the list. Interestingly, Schaffer's tables indicated no positive influence of seriousness of the charged offense on likelihood of nonappearance.

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6 S. Andrew Schaffer, Bail and Parole Jumping in Manhattan in 1967 (New York: Vera Institute of Justice, 1970).

Three other studies that make extensive use of cross-tabulations are of special interest because they pertain to the District of Columbia pretrial release system. The first of these, a 1963 study published by the Junior Bar Section of the D.C. Bar Association,[7] included an analysis of questionnaires concerning the bail-setting process. The questionnaires revealed that the bond recommendation of the prosecuting Assistant U.S. Attorney was given great weight in the actual setting of conditions. These recommendations, in turn, were said to be based on the defendant's prior convictions, the nature of the alleged offense, the weight of the evidence, and the degree of injury to the victim. Community-ties indicators, such as length of time as a local resident, length and nature of employment, and prior probation record were claimed to be important but usually unavailable. While one hesitates to draw conclusions about behavior from questionnaire responses, the list of variables influencing the recommendation is surprising in light of the historical legal purpose of bail, to assure the defendant's appearance for trial. These findings no doubt helped stimulate enactment of bail reform laws for the District three years later.

The second study analyzed the records of 714 defendants processed by the D.C. criminal justice system during four weeks

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7 The Bail System of the District of Columbia: Report of the Committee on the Administration of Bail of the Junior Bar Section of the Bar Association of the District of Columbia (Washington, D.C.: 1963).

in 1968.[8] The study found substantial uniformity in pretrial release rates, irrespective of crime type or seriousness. Moreover, it found no defendant characteristics other than employment status to be strongly associated with the probability of pretrial rearrest. The fact that only 47 defendants in the data base were rearrested may help explain the inability to find such relationships. However, even among the small sample, the rearrest probability was found to increase with the length of the pretrial release period.

The third study, performed in 1971 under the auspices of the Harvard Civil Rights-Civil Liberties Law Review,[9] was intended to test the power of D.C.'s preventive detention criteria to predict pretrial crime by 427 Boston defendants. The study's principal conclusion, that pretrial crime can be predicted by length of the pretrial release period but not by the D.C. criteria, would have been interesting had there not been a problem of sample selection bias. All 427 defendants would have been statutorily detainable as dangerous defendants if they had been arrested in the District of Columbia. Thus, like a study of

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8 See J.W. Locke, et al., Compilation and Use of Criminal Court Data in Relation to Pre-Trial Release of Defendants: Pilot Study, National Bureau of Standards Technical Note 535 (Washington, D.C.: U.S. Department of Commerce, 1970). See also J. Rick, et al., Tabulation and Extended Analysis of the Pre-Trial Release Data for Defendants in the District of Columbia, National Bureau of Standards Report 10259 (Washington, D.C.: U.S. Department of Commerce, 1970).

9 Arthur R. Angel, et al., "Preventive Detention: An Empirical Analysis," Harvard Civil Rights - Civil Liberties Law Review 6 (1971): 300-96.

the effect of age on death rate using a sample of elderly nursing home patients, the Harvard study may have missed effects that would have been apparent in a sample drawn from the general population of defendants.

More recent studies have applied multivariate statistical techniques in attempts to validate the predictive power of variables used as criteria for release on recognizance. One study, by Michael Gottfredson,[10] incorporated data on 56 personal and case characteristics, including those used in the Vera Institute's Manhattan Bail Project, for 201 low-risk and 328 high-risk released defendants. Among these defendants, Gottfredson reported correlations of only about 0.15 between a score computed according to the Vera rules and various indicators of pretrial misconduct. Within half the sample, randomly selected, an alternative score based on multiple regression weights displayed better correlations, approximately 0.4, with the misconduct indicators. However, when applied to the other half of the sample, the regression-based score performed no better than the Vera score. This study makes clear both the difficulty of predicting pretrial misconduct and the importance of validating results across samples. However, its results are subject to both the usual caveats associated with regression analysis of a dichotomous dependent variable, and the possibility that excluding from the sample defendants charged with violent crimes may have unintentionally

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[10] Michael R. Gottfredson, "An Empirical Analysis of the Pretrial Release Decisions," Journal of Criminal Justice 2 (1974):287-304.

masked predictive power of some variables that predominate among those defendants. Nevertheless, charged crime type, a drug history, prior convictions, and employment status emerged as significant predictors of nonappearance and pretrial rearrest.

A recent study by Ballard[11] applied discriminant analysis to a sample of 519 Cobb County, Georgia, defendants in an attempt to learn which of 59 variables showed power to discriminate between defendants who appear for trial and those who do not. Prior drug use, length of residence, presence of a criminal record, and number of children headed Ballard's list of significant predictors. Unfortunately, discriminant analysis relies heavily on an assumption that the independent variables are distributed as multivariate normal. Since virtually all variables included are categorical, this assumption is untenable; moreover, the fact that some of the categorical variables are not coded as the usual 0 or 1 makes interpretation difficult.

A 1977 study by Reynolds[12] found nonlocal residence, the number of prior arrests, and the charge categories of theft, weapons, and "other offenses" to be significant predictors of

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11 Allan J. Ballard, "Components of the Vera Hypothesis: An Empirical Analysis," Criminal Justice Review, Spring 1977: 55-71.

12 Helen Reynolds, "Measuring the Effectiveness of the Bail Bond System as an Assurance of Trial Appearance," presented at National Conference on Criminal Justice Evaluation, sponsored by the National Institute of Law Enforcement and Criminal Justice, February 1977.

nonappearance, using multiple regression analysis. However, these results should be treated cautiously, since bond amount, which is not included in the nonappearance equation, is shown elsewhere in the paper to be correlated with both nonappearance and several of the included variables. This omission biases the other coefficient estimates.

The first economic investigation of pretrial release and misconduct, and the research to which our multivariate analysis owes its greatest intellectual debt, was reported in a pair of articles by Landes.[13] The first article specified a theoretical model of judicial behavior in setting pretrial release conditions. Within the framework of this model, Landes stated testable hypotheses concerning the behavior of judges and released defendants, under certain assumptions about their objectives. In the second article, by testing these hypotheses using data on a random sample of 858 indigent Manhattan defendants, he inferred that bond is set more consistently with the objective of crime control than with the objective of assuring the defendant's appearance for trial.

More specifically, Landes's empirical study found the average statutory sentence for the alleged offense type, the felony/misdemeanor distinction, parolee or probationer status at time of arrest, forcible arrest resistance, and employment

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[13] William M. Landes, "The Bail System: An Economic Approach," Journal of Legal Studies 2 (February 1973): 79-105; and "Legality and Reality: Some Evidence on Criminal Procedure," Journal of Legal Studies 3 (June 1974): 287-337.

status to be significant determinants of bond amount. Among these variables, all but employment status (and arrest resistance, which could not be tested) were also found to be predictors of either the occurrence or severity of pretrial crime, as measured by rearrest; but only the resistance indicator was found also to explain nonappearance. The other significant predictors of nonappearance--defendant's age and existence of an outstanding detainer--were not found pertinent to the bond decision.

These findings led Landes to state that

> ... it would not be unreasonable to conclude that the principal social function of the existing bail system (as it operates [in 1971] in New York City) is to prevent defendants from committing additional crimes, rather than from disappearing.14

He went on to note the sharp conflict between this finding and the statements by numerous scholars and criminal justice practitioners that such a policy is, if not unconstitutional, at least socially undesirable because of the uncertainty surrounding prediction of future crimes.

A 1977 study of bail reform projects in three cities[15] also made use of the logit model used by Landes, and partially confirmed several of Landes's findings in other settings. Like Landes, Bynum found that the defendant's prior record

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[14]Landes, "Legality and Reality": 327.

[15]Timothy Bynum, "An Empirical Exploration of the Factors Influencing Release on Recognizance" Ph.D. dissertation, Florida State University, December 1977.

and his financial status had more influence on his ability to obtain personal recognizance release than did his residential and family ties to the community. However, since he also found prior record but not community ties to predict nonappearance, the release decisions in those cities were partially consistent with the objective of reducing nonappearance.

As noted in Appendix A, an analysis in the Landes framework but using District of Columbia data is of interest for several reasons. First, since D.C. law provides for the preventive detention of dangerous defendants, confirmation of his conclusion concerning the goals of financial bond would demonstrate systematic utilization of an extralegal means of detaining them when a legal means exists. Second, our data base permits analysis of females and nonindigents, both of whom were absent from Landes's data base. Third, we have been able to construct a proxy variable that differentiates between willful and nonwillful failure to appear. Fourth, we are able to test for effects of detention facility capacity constraints on pretrial release decisions.

The results of our analysis are summarized in the next section.

B. RESULTS OF MULTIVARIATE ANALYSIS

To study the questions listed earlier in this chapter, we constructed about 60 variables, defined in Exhibit A-2 in Appendix A, that were considered potentially important. These particular variables were chosen from those available as operational measures of concepts that are theoretically or commonly

considered pertinent to the pretrial release decision, the defendant's ability to make bond, or the probability of pretrial misconduct. The concepts and operational measures, as defined in Appendix A, are summarized here:

- Current Crime Seriousness--charge, weapons use, victim injury, victim intimidation, maximum allowable sentence, and felony/misdemeanor.
- Case Convictability--victim a business or institution, reluctant prosecution, codefendants, victim/defendant relationship, tangible evidence recovered, number of witnesses, screening prosecutor's assessment of conviction.
- Criminal History--counts of prior arrests for all serious crimes, prior arrests for violent crimes, pending cases, closed cases during 12 months preceding arrest indicator that defendant is parolee or probationer.
- Nonappearance History--number of bench warrants against defendant in preceding 12 months, number of bench warrants in pending cases.
- Community Ties--income proxy, local residence indicator, current employment status, employment history, drug use, alcohol abuse history.
- Extralegal Demographic Characteristics--race, sex, age.
- Procedural Variables--judge identity, judge experience, detention facility population, Saturday arraignment indicator.[16]

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16 A D.C. Superior Court judge had suggested to us that Saturday arraignment court sessions are not usually under the jurisdiction of the judge officially assigned to arraignment court, and that Bail Agency verification of community-ties information may be more difficult and less complete for Saturday arraignments. We wished to test whether either condition systematically affected pretrial release decisions.

The analysis confirmed the importance of some, found others to have important but unexpected effects, and failed to confirm the importance of still others. The three subsections below summarize those findings with respect to release conditions, obtaining release under financial conditions, and pretrial misconduct. Unless stated otherwise, the effects of individual explanatory variables on a dependent variable, as described in the rest of this chapter, should be thought of as if all other pertinent variables in our data base were held constant. The reader is urged to consult Appendix A for discussions of goodness of fit, significance levels, and other measures affecting the degree of confidence one may place in the results.

1. Release Conditions

Except for the few defendants preventively detained or assigned to narcotic or alcohol programs, the setting of pretrial release conditions in the District of Columbia may be thought of as a sequence of three decisions by the arraignment judge:

> Stage 1: Decide whether to set financial or nonfinancial release conditions.
>
> Stage 2: Choose between alternatives within the financial and nonfinancial categories: cash vs. surety financial release; or own-recognizance vs. third-party custodial nonfinancial release.
>
> Stage 3: For defendants assigned financial conditions, set the amount of bond.

The three stages are pictured in Exhibit III-1.

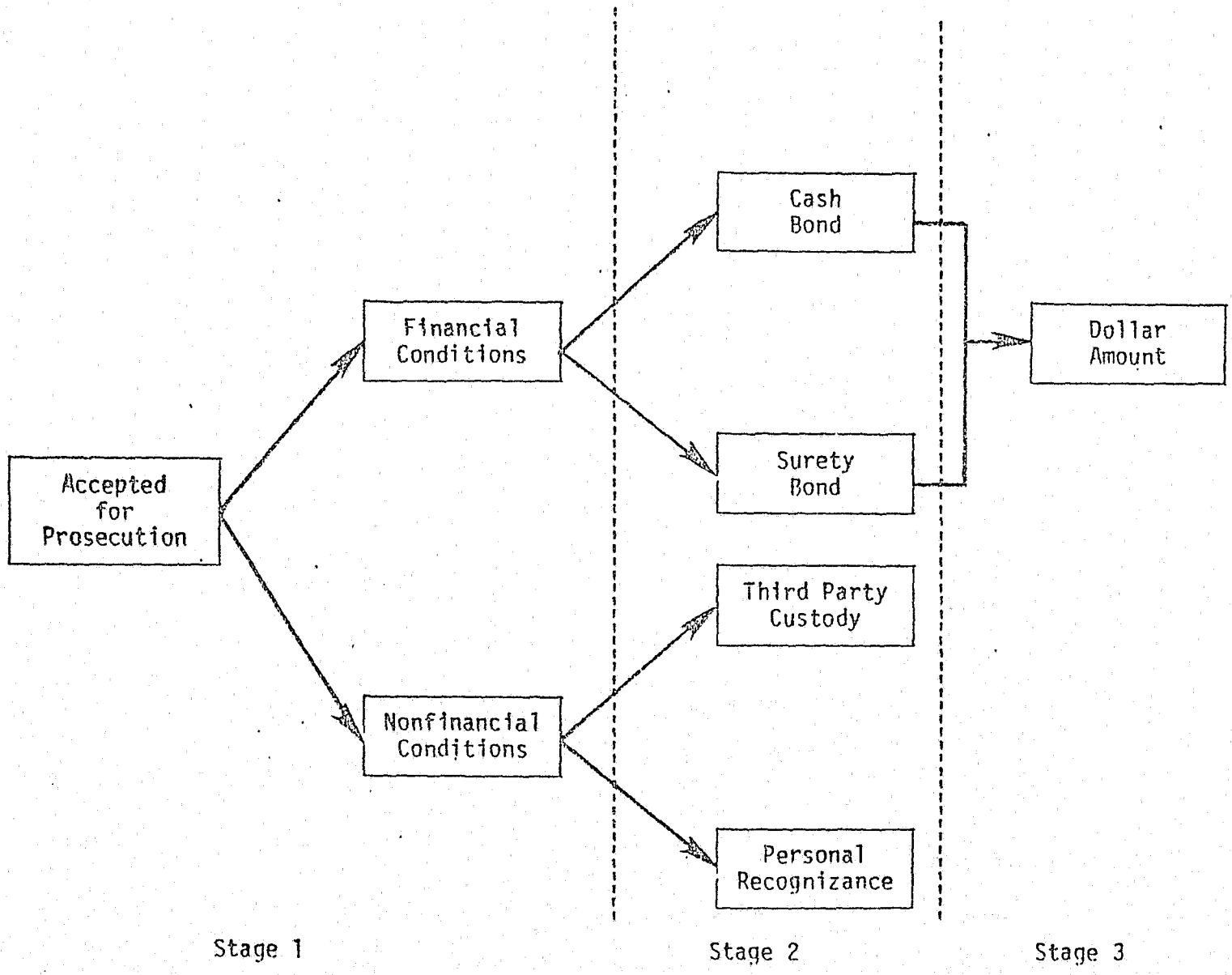

Exhibit III-1. Stages in the Setting of Pretrial Release Conditions.

The three stages are pictured in Exhibit III-1.

The Stage 1 results, reported in Exhibit A-3, are generally consistent with expectations. Among felony defendants, those accused of homicide or Bail Reform Act (BRA) violation, and those who were armed during the alleged offense, appear more likely to receive financial conditions; those accused of assault and drug crimes tend to receive nonfinancial conditions. Drug crimes and BRA violations had the same effects for misdemeanor defendants. The results do not suggest that any other crime type affected the decision systematically. The defendant's prior record, as measured by such variables as number of prior arrests (particularly recent arrests), number of pending cases, and status as a parolee or probationer, showed a powerful effect: defendants with extensive histories are less likely to be released on nonfinancial conditions. Most personal defendant characteristics also showed expected effects: local, employed, and low-income defendants received financial conditions at a lower rate than others. More surprisingly, white defendants and misdemeanor defendants with a drug history received financial conditions at a higher rate than others.

As anticipated, individual judges were found not to make the financial-nonfinancial decision identically. However, this result was due to deviations of a few judges (two in felony cases, four in misdemeanors) from the norms, rather

gain experience on the D.C. bench, they use financial conditions more frequently. No evidence was found to support the "courthouse folklore" that the judges who substitute in Saturday arraignment court make this basic decision differently from the regular weekday judges.

Two variables related to conviction likelihood showed conflicting effects among felony cases. Since it is often argued that a defendant facing an ironclad case against him has more reason to flee, one would expect such defendants to receive more stringent release conditions. This expectation was confirmed with respect to one indicator: when the screening assistant prosecutor indicated reluctance to prosecute because of exculpatory evidence, victim provocation, or victim participation, financial conditions were less likely to be imposed. However, the higher the screening assistant's subjective assessment of conviction likelihood, the less likely was the imposition of financial conditions. This contradictory result may reflect lack of attention to the convictability assessments of inexperienced screening assistants; such inattention may be an efficient decision, since Rhodes found the assessments to be uncorrelated with the probability of conviction at trial. Variables previously found to be statistically associated with conviction probability at trial did not appear to influence the setting of pretrial

release conditions.

Interestingly, our statistical results indicate that the financial-nonfinancial decision is responsive to capacity problems in the detention facility: the greater the D.C. Jail population during the month preceding arraignment, the less the probability of financial conditions.

As depicted in Exhibit III-1, Stage 2 in setting release conditions is to choose between the personal recognizance and third-party custody forms of nonfinancial release, or the cash and surety forms of financial release. The results pertaining to the third-party custody decision appear in Exhibit A-4 in Appendix A.

As indicated in Chapter II, the dominant agencies serving as third-party custodians are controversial. Proponents emhasize their success in reducing economic discrimination against defendants whose prior records and current charges preclude personal recognizance release, but who cannot afford to post cash bond or pay a bondsman. Opponents claim that the custodians are lax in providing supervision and unsuccessful in preventing either failure to appear or pretrial rearrest.

Comment on the opponents' claim is deferred to Chapter IV. However, our results on defendants released on nonfinancial

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17 See Brian Forst and Kathleen B. Brosi, "A Theoretical and Empirical Analysis of the Prosecutor," The Journal of Legal Studies 6 (January 1977): 177-92; and William M. Rhodes, Plea Bargaining: Who Gains? Who Loses? PROMIS Research Publication no. 14 (INSLAW, 1978, forthcoming): IV-13.

conditions strongly confirm both the proponents' claim and disagreement among judges on the value of third-party custodians. Felony defendants charged with the violent offenses of homicide, robbery, or sexual assault, and misdemeanor defendants charged with burglary or bail violation were more likely than other defendants to be released to a third-party custodian. Defendants with "bad" criminal records, as measured by the existence of pending cases, a number of arrests during the preceding 12 months, and status as a parolee or probationer, were also more likely than other defendants to be released to a third-party custodian.

Among accused felons, older defendants and female defendants were found more likely to receive release on recognizance. However, even controlling for all these factors, judge identity played a more powerful role in this choice than in any other stage of the release decision. Variables related to conviction probability seem to play no role; as one might expect, jail capacity effects were nil with respect to the choice between alternative forms of nonfinancial release.

One interesting but unexplained result was that misdemeanor defendants arraigned on a Saturday were significantly more likely to be released to a third-party custodian than were defendants arraigned on a weekday. This result seems to counter conventional wisdom that representatives of the custodians are less likely to be available on Saturdays.

Stage 2 in setting financial conditions is the choice between cash and surety bond. The multivariate analysis of this decision, reported in Exhibit A-5, indicates that judge identity is the primary determinant of this decision. This suggests strong differences of opinion as to the appropriate role of bondsmen in the criminal justice process. Felony defendants charged with larceny, weapons possession offenses, or drug offenses, and defendants arraigned on Saturday, were somewhat less likely than others to face surety bond conditions. Parolees and probationers received surety conditions more frequently. Among misdemeanor defendants, whites and females were found to be significantly less likely to receive surety bond conditions. The probability of surety bond for misdemeanor defendants is decreased if the detention facility is close to capacity during the month preceding arraignment. If the surety requirement is an additional barrier to release, this result is consistent with the similar effect observed for the financial-nonfinancial decision.

For financial release defendants, the setting of conditions is completed by determining the exact dollar amount of bond. For cases in our sample in which financial bond was required, the average amount was $1,264 in misdemeanor cases and $4,361 in felony cases. Surety bonds averaged $257 more than cash bonds in felony cases, which was statistically insignificant. The differential in misdemeanor cases was a statistically significant $368. The multiple regression results for bond amount are reported in Exhibit A-6.

For felony defendants, the results indicate that holding other factors constant, a homicide charge adds just over $10,000 and a sexual assault charge adds nearly $8,500 to the average bond required for other charges. Each pending case adds just over $1,500 to the required bond, and status as a parolee or probationer adds just over $1,900. Bond for employed defendants averaged about $1,400 less than that for unemployed defendants, an indication that ability to pay is not the primary determinant of bond amount. The exhibit also shows that arraignment judge identity had a significant effect on bond amount for both felonies and misdemeanors; however, the effect appears due to the decisions of a single judge, who sets much higher bond amounts than his colleagues.

For misdemeanor defendants, the only crime type that was found to affect significantly the setting of bond amount was bail violation, which adds $649, on average. Interestingly, a history of drug use adds about $500 to bond amount; while a history of alcohol abuse subtracts over $700. No other characteristics of the defendant or his criminal history were found to affect the setting of bond amount. Neither variables associated with conviction likelihood nor jail capacity constraints appeared to affect bond amount for either felonies or misdemeanors.

Considering the pretrial release decision as a whole, we are left with the following answers to the questions posed at the beginning of this chapter:

- Crime types that are commonly thought to suggest a potential for pretrial misconduct, such as

homicide, assault, or bail violation, do result in more severe release conditions. Defendants in these categories were more likely to face financial conditions, were more likely to be placed under the supervision of a bondsman, and were required to pledge higher bonds than were other defendants.

- Negative attributes of the defendant's criminal record, such as parole or probation status, pending cases, and recent arrests, were generally associated with financial conditions, requirement for a surety bond or third-party custodian, and higher bond amounts. These effects were generally stronger in misdemeanor than in felony cases.

- Of all defendant characteristics recorded, being employed had the most consistent effect, reducing the severity of release conditions at each stage when other pertinent factors were statistically controlled. Local residence affected the initial choice between financial and nonfinancial conditions, but not the subsequent finer breakdowns. Other characteristics, such as race, sex, or a history of drug use, seemed to influence single stages in the setting of release conditions, but the overall effect was unclear.

- Arraignment judge identity appeared as a powerful determinant at each stage in the setting of release conditions. However, both the number and identity of judges deviating from the consensus differed at the three stages.

- Neither likelihood of conviction nor potential sentence was found to affect any stage in the setting of conditions.

- A high jail population during the month preceding arraignment was associated with a higher probability of nonfinancial release. This result is consistent with a jail capacity constraint, but no similar effect was found at subsequent stages in the setting of pretrial release conditions.

2. Obtaining Release

Defendants for whom financial conditions are set may or may not satisfy those conditions and obtain release. This eventual outcome is not recorded in PROMIS. However, as discussed in

Chapter II, a random sample of financial condition defendants was identified, and the release outcomes for the sample cases were ascertained from manual court records. Of the 415 defendants in the sample, 245 obtained release. An analysis of these 415 cases was performed to learn what variables seem to determine which defendants obtain release. The estimation results appear in Exhibit A-7.

The results indicate that, as expected, a higher bond decreases the probability of obtaining release. However, we found no evidence that low-income defendants were less likely than other defendants to post bond of a given amount. The results indicate that defendants are more likely to obtain release if they are required to post cash bond rather than a surety bond for the same amount. This result is not surprising, since it may indicate merely that defendants are more willing to post a refundable 10 percent bond with the court than to pay a nonrefundable 10 percent to a bondsman. Such a preference is understandable not only for financial reasons, but also because surety releasees face potential sanctions imposed by bondsmen, as noted in Chapter I, in addition to potential court sanctions faced by all defendants on pretrial release.

While no defendant characteristics were found to be systematically associated with the ability to post cash bond, employed defendants appeared more likely to obtain surety bond if they had been employed at least six months. This may indicate a preference on the part of bondsmen, since no such effect is apparent with respect to cash bond. However, it may

also indicate that employed defendants have greater incentive than others to obtain release (in order to preserve their jobs), or better access to funds with which to pay the bondsman. In any event, employment status seems to perform the same screening function for defendants facing surety bond requirements as it does with respect to the judge's choice between financial and nonfinancial conditions.

3. Failure to Appear

In the District of Columbia, the presiding judge may issue a bench warrant for the arrest of any defendant who fails to appear for a scheduled court proceeding. As reported in Exhibits II-20a and II-20b, at least one bench warrant was issued in about 11 percent of the cases in our sample. However, as explained in Chapter I, issuance of a bench warrant does not necessarily indicate intentional flight by the defendant. Therefore, separate analyses were performed of all failures to appear and of willful failures to appear. The results are reported in Exhibit A-8. They indicate clearly the difficulty of predicting the occurrence of a rare event, nonappearance, by means of a statistically derived equation. The low values of R^2 (.03 for willful nonappearance, .05 for all nonappearance) indicate that many defendants the model would call bad risks do in fact appear in court when required. In fact, the percentage of outcomes predicted correctly, 90.3 for all nonappearances, is approximately what one would achieve by predicting that every

defendant would appear. While those overall "goodness-of-fit" statistics indicate the enormity of the gulf between existing knowledge and the knowledge one would need to justify "computerized pretrial release," the significance of the individual coefficients demonstrates that certain subgroups of defendants present nonappearance risks that are systematically different from the risk among released defendants as a whole.

Considering all failures to appear, the failure rate was lower for defendants charged with assault, sexual assault, or weapons offenses than for other defendants. Only the assault effect was apparent with respect to willful failure. Employed defendants were found more likely to appear, under either definition. Known drug users had a relatively high failure rate, though no effect was apparent for willful failure. No other characteristics of the defendant or his criminal history were found to be associated with pretrial flight. Neither variables associated with high conviction probability nor a severe potential sentence were found to encourage pretrial flight.

These analyses provide no evidence that higher bond amounts reduce the probability that a released defendant will fail to appear, willfully or otherwise. However, this result must be interpreted cautiously for two reasons. First, bond amounts are frequently reduced after arraignment at the request of the defense attorney. Our data record only the initial amount, which may not be in effect at the time a defendant makes the decision not to appear. This form of measurement error makes

any existing deterrence effect harder to identify. Second, a high bond may prevent the worst risks from being released in the first place. Had they obtained release, the high bond might have successfully deterred them from flight.

The analysis indicates that defendants released to third-party custodians are less likely than those on other forms of release to appear for trial, under either definition. However, it is not clear whether this results from some attribute of the third-party custody process itself or whether some unrecorded defendant characteristic increases the probabilities of both third-party release and failure to appear. Failure to appear in general was more frequent for defendants released on cash bond than for those released on surety bond or personal recognizance. However, no such effect was apparent with respect to willful failure to appear.

4. Pretrial Rearrest

Once a defendant has obtained financial or nonfinancial release, he may commit crimes before the initial case comes to trial. As explained in Chapter II, we cannot directly observe pretrial crime. Therefore, separate probit analyses were performed using two observable proxies: pretrial rearrest, and pretrial rearrest leading to conviction. The results of both analyses are reported in Exhibit A-9. Although the overall goodness-of-fit statistics indicate that pretrial rearrest can be predicted somewhat more successfully than failure to appear, they do not suggest that this statistical model is a satisfactory

predictor of outcomes in individual cases. Nevertheless, certain relationships emerge that are unlikely to have emerged by chance.

Defendants charged with felonies--especially robbery, burglary, larceny, property destruction, or arson--were more likely than other defendants to be rearrested before the first case was closed. Interestingly, the rearrest probability was higher still for defendants not accused of using a weapon in the first alleged crime. When crime was measured by rearrest leading to conviction, only the effects of felony, burglary, and larceny charges were still statistically significant.

In contrast to pretrial flight, pretrial rearrest was associated with several characteristics of the defendant and his prior criminal history. Recent arrests, arrests for crimes against persons at any time, and a history of drug use were strong positive indicators of pretrial rearrest. In contrast, employed defendants, white defendants, and older defendants were less likely than others to be rearrested. When only rearrests leading to conviction were counted, the effects of arrests for crimes against persons, drug use, and defendant race became statistically insignificant. One might be tempted to claim that this result demonstrates that police systematically rearrest drug users and blacks on pretrial release, who are later acquitted due to insufficient evidence. However, the two equations differ through generally larger standard errors in the second equation, rather than dramatic differences in the magnitudes

of the coefficients. Thus the three variables seem to lose significance because case outcome is in part an unexplained event, rather than because police systematically arrest defendants on pretrial release who are later not convicted.

The results indicate that high bond does not discourage pretrial crime, by either measure. This finding is not surprising when one realizes that bond is not forfeited upon rearrest. Defendants released to third-party custodians were found more likely to be rearrested (but not rearrested and convicted); however, the interpretation of that result is subject to the reservations noted above with respect to failure to appear.

It is interesting to compare the variables predicting rearrest during pretrial release to those predicting rearrest in general. In a recent study that followed a panel of District of Columbia arrestees over a five-year period,[18] Kristen Williams found arrestees charged in 1972 with burglary, robbery, or larceny, or having extensive and recent criminal histories, were generally rearrested more frequently and for more serious crimes than other defendants. She also found unemployment and a history of drug use to be strong positive predictors of rearrest, reprosecution, and, to a lesser extent, reconviction.

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[18] Kristen Williams, The Scope and Prediction of Recidivism, PROMIS Research Publication no. 10 (INSLAW, 1978, forthcoming): IV-11, VII-1-3.

Finally, she found that white defendants and older defendants were less likely than others to recidivate. Thus, we find a uniformity between variables that predict pretrial rearrest and variables that predict rearrest in general. This uniformity seems especially striking in view of the different defendant samples and different time periods of the two studies. The only major discrepancy was a positive relationship between a felony charge and rearrest before trial, but not rearrest in general. This difference is perhaps explained by the fact that during 1974, felony cases remained in the D.C. Superior Court 41 days longer than misdemeanor cases, on average, thereby providing additional opportunity for the released felony defendant to be rearrested.

IV. IMPLICATIONS AND LIMITATIONS

In Section A of this chapter, we draw upon our empirical results to address the issues raised at the end of Chapter I. In Section B, we discuss the limitations of our analysis and suggest some fruitful areas for further research.

A. IMPLICATIONS OF ANALYSIS

1. Misconduct Prediction and the Use of Bail

As explained in Chapter I, the arraignment judge, assisted by the D.C. Bail Agency, chooses from a bewildering variety of pretrial release conditions. His choice in a given case may be thought of as his answer to the question, "Should society be compensated for the risk of releasing this defendant before trial?" An affirmative answer leads to a financial bond, raised by a bondsman or by the defendant himself; a negative answer leads to nonfinancial release,[1] perhaps to the custody of a third party. Our behavioral analysis has identified a set of variables statistically associated with the judge's financial-nonfinancial decision, another set associated with defendant failure to appear, and a third set associated with pretrial crime by the defendant, as measured by rearrest.

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[1] We are ignoring here the one defendant preventively detained during 1974, as well as other defendants released to alcohol or drug treatment programs. These defendants were involved in less than 2 percent of all cases arraigned in D.C. Superior Court during 1974.

For policy purposes, it is interesting to ask whether the variables that seem to predict defendant misconduct also influence the judge's choice of conditions. If we find, for example, that the variables predicting nonappearance do not appear to influence the pretrial release decision, the implication is that judges are not acting consistently with the intent of the Bail Reform Act. A finding that variables predicting pretrial rearrest do not affect the pretrial release decision would cast doubt on claims that, despite the law, financial conditions are used as an informal means of detaining defendants thought to be dangerous, without the procedural safeguards of a formal hearing. Finally, a finding that the variables explaining the use of bond had nothing in common with the variables explaining either type of misconduct would raise questions whether the pretrial release system was satisfying either the legal mandate or the crime control objective.[2]

Exhibit IV-1 lists 24 explanatory attributes of alleged felony crimes and felony defendants that were reported in Appendix A to be associated with either the financial-nonfinancial decision, failure to appear, or rearrest. Each column contains a +, -, or 0, indicating whether each attribute was found

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2 William M. Landes, "The Bail System: An Economic Approach," Journal of Legal Studies 2 (February 1973): 79-105.

Exhibit IV-1

Comparison of Variables Explaining Financial Conditions Failure to Appear, and Pretrial Rearrest

	Behavior Being Explained		
Explanatory Attribute	Use of Financial Bond	Failure to Appear	Pretrial Rearrest
CURRENT CHARGE			
Homicide	+	0	0
Assault	-	-	0
Drug Violation	-	0	0
Bail Violation	+	0	0
Sexual Assault	0	-	0
Weapon Violation	0	-	0
Robbery	0	0	+
Burglary	0	0	+
Larceny	0	0	+
Arson/Property Destruction	0	0	+
CRIME SEVERITY			
No weapon used	-	0	+
DEFENDANT HISTORY			
Nonappearance in Pending Case	+	0	0
Parole/Probation when Arrested	+	0	0
# Pending Cases	+	0	+
# Prior Arrests/All crimes	+	0	0
# Prior Arrests/Crimes against persons	0	0	+
Arrested Last 5 Years?	+	0	0
# Arrests in Preceding 12 mo	0	0	+
DEFENDANT DESCRIPTORS			
Local Residence	-	0	0
Employed	-	-	-
Low Income	-	0	0
Drug User	0	+	+
Caucasian	+	0	-
Older	0	0	-

Source: Estimated coefficients reported in Exhibits A-3, A-6 and A-9.

positively related, negatively related, or statistically unrelated to the probability of the event described by the column heading.[3]

The exhibit illustrates that, with few exceptions, variables that seem to predict misconduct do not influence the financial-nonfinancial decision; moreover, variables that seem to affect the decision do not predict misconduct. For one example, holding other variables constant, a history of drug use is associated with greater risks of both nonappearance and rearrest, yet known drug users were found no more likely than others to receive financial conditions, and accused drug violators were actually less likely to receive such conditions.[4] For another, defendants not accused of using a weapon in the alleged offense were less likely to receive financial conditions, yet more likely to be rearrested while on release. In contrast, controlling for other variables, defendants having a local residence faced financial requirements less often than others, yet a local residence was not found to affect the likelihood of either failure to appear

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[3] Both absolute and standardized coefficient estimates, as well as measures of goodness-of-fit and predictive power, are reported in Exhibit A-3 for the financial-nonfinancial decision, Exhibit A-8 for nonappearance, and Exhibit A-9 for rearrest.

[4] Because Exhibit IV-1 is based on an analysis of felony cases only, the results are probably not distorted by personal recognizance release of accused marijuana users.

or rearrest.[5] Finally, none of the four crime types--robbery, burglary, larceny, and arson-property destruction--that seem to predict rearrest influences the financial-nonfinancial decision. Of the three crime types--assault, sexual assault, and weapons violations--associated with nonappearance, only the first seems to affect the release decision.

Three exceptions to this inconsistency should be noted. As expected, employed defendants, who present less risk of non-appearance and rearrest, are less likely to receive financial conditions. Assault defendants, who present less nonappearance risk, receive financial conditions less often. And defendants with more pending cases, who present a greater rearrest risk, are more likely to receive financial conditions. But the other 21 variables present a striking picture of inconsistency.

To put this discussion in perspective, a few words are in order about the statistical significance of these relationships and the descriptive and predictive power of the model. First, conventional tests reported in Appendix A indicate statistical significance at better than the 0.05 level for all relationships shown in Exhibit IV-1, and at better than the 0.01 level for most. Thus, like an actuary estimating death rates for a subset of the population, we feel confident of the existence of the

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[5] Shortly before publication of this report, problems were discovered in the coding of the local-residence variable that affected a substantial proportion of cases. Therefore, this finding should be considered questionable at the present time.

relationships reported, in the aggregate. However, the reader is cautioned that the power of our model to predict the outcomes of individual cases is extremely limited. Low values of R^2 (0.23 in the bond decision equation, 0.05 in the nonappearance equation, and 0.10 in the rearrest equation) indicate a high degree of randomness in individual outcomes. Therefore, like an actuary asked to predict whether a certain 62-year-old defendant will die before his case is disposed of, we cannot predict individual misconduct with accuracy. Based on an analysis of our sample, the model was "wrong" in predicting misconduct only about half as often as random guesses made with appropriate frequencies; however, it was "wrong" about as often as a guess that every defendant would appear when requested and that no released defendant would be arrested before disposition of his original case. The low power to predict individual case outcomes testifies to the heavy weight placed on the arraignment judge by the D.C. bail laws: to determine whether release on recognizance will reasonably assure the defendant's appearance, and, if not, to determine the minimal condition sufficient to provide this assurance.

The difficulty with using financial conditions to detain high-risk defendants is depicted graphically in Exhibits IV-2 and IV-3. To construct these charts, we used our model to estimate the probabilities of rearrest and nonappearance for each of 424 randomly selected defendants who were required to post cash or surety bond. Assuming that the defendant rated most

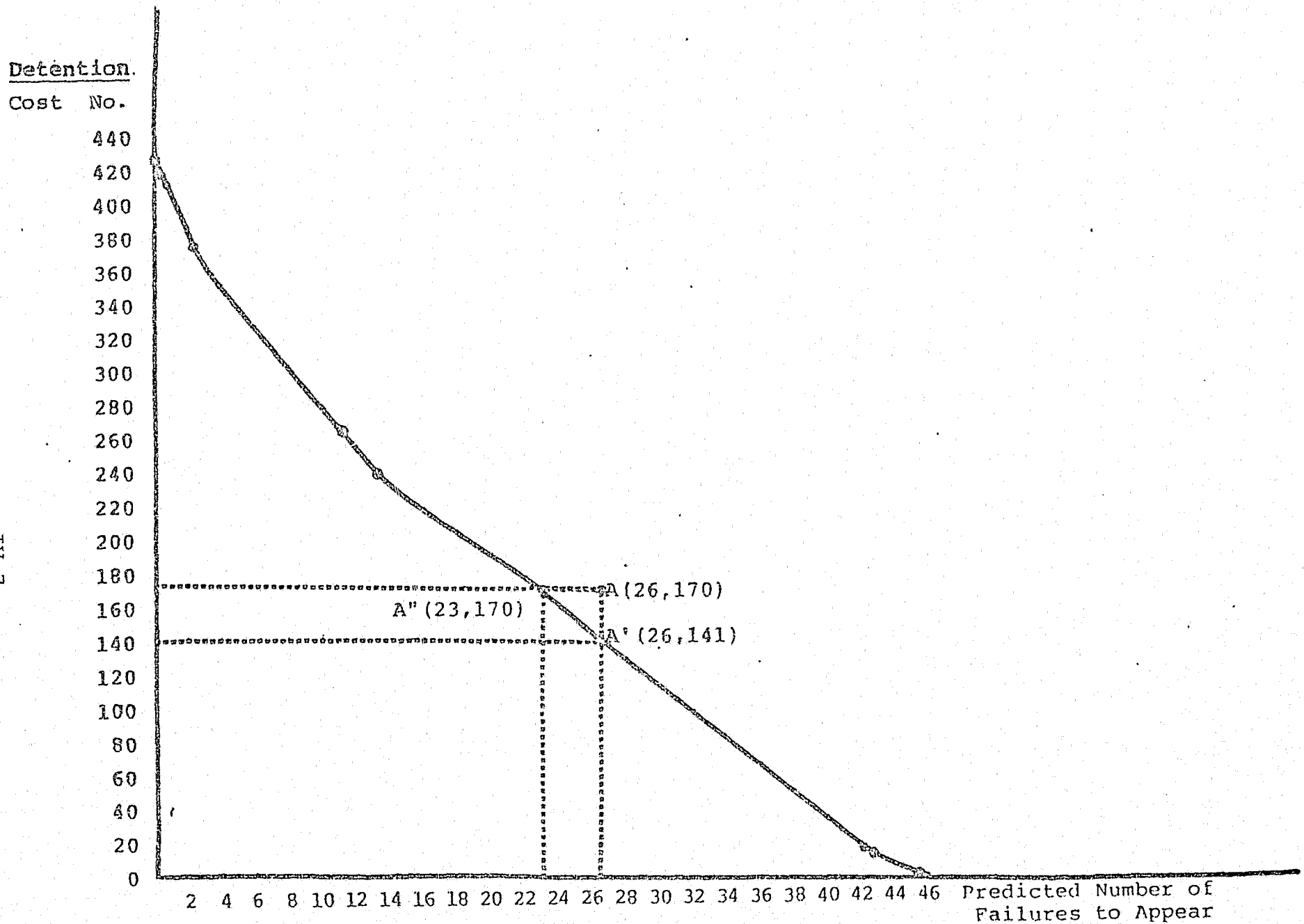

Exhibit IV-2

Detention/Nonappearance Efficiency Frontier (424 Defendants)

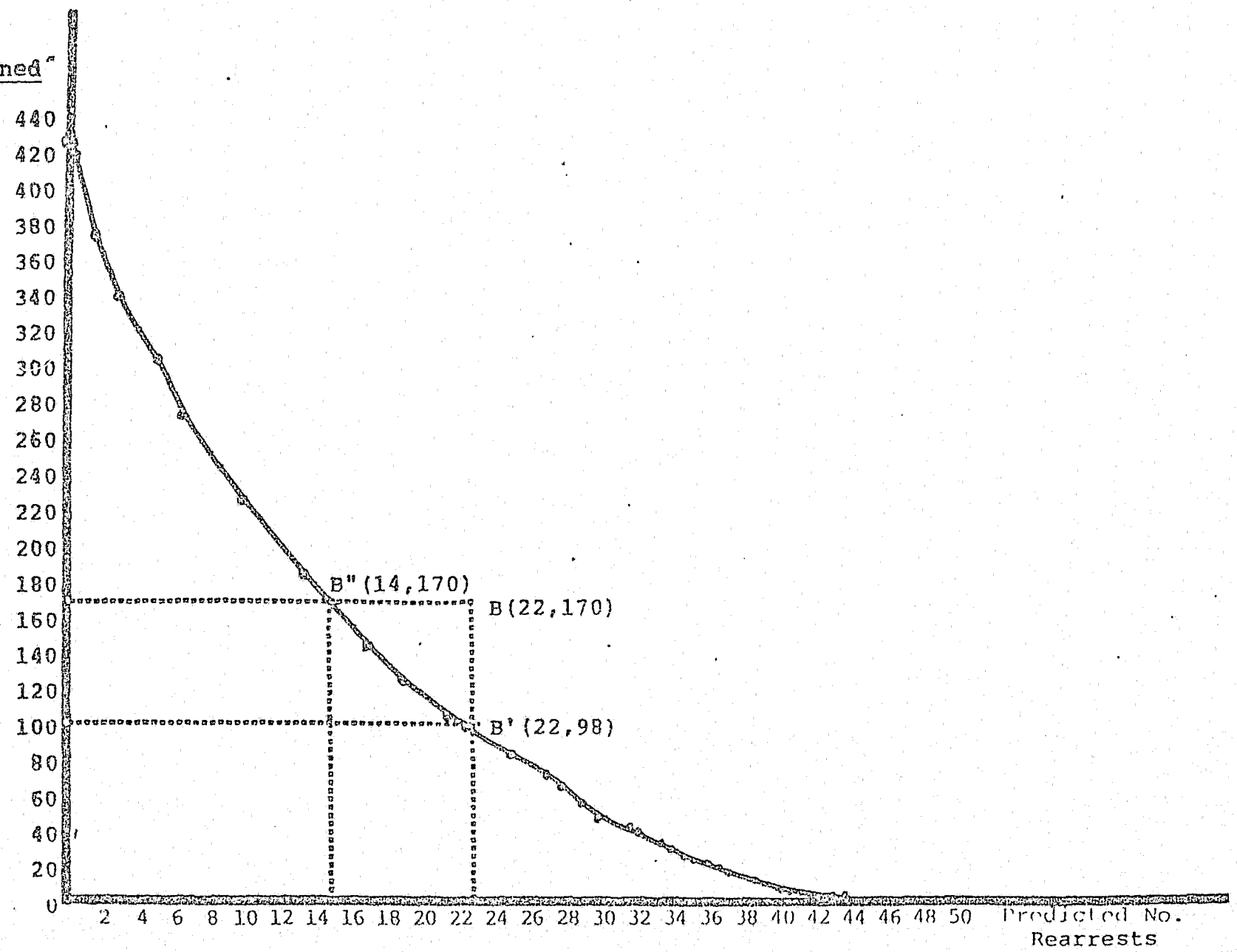

Exhibit IV-3

Detention/Rearrest Efficiency Frontier (424 Defendants)

likely to appear was released first, the next most likely second, and so forth, the curve in Exhibit IV-2 plots the minimum number that must be detained to reduce expected nonappearance to any desired rate according to our model. Obviously, if all 424 were detained, none would fail to appear; if all obtained release, the model predicts that 42 would fail to appear. Point A indicates that, in reality, 170 were detained, causing a predicted 26 nonappearances by those released; point A' indicates that through selection with the level of accuracy of our model, the expected number detained could have been reduced to 141 without increasing the expected number of nonappearances. Point A" indicates that the number of nonappearances could have been cut slightly if the 170 most flight-prone defendants had been detained instead of the 170 who could not make bond. Exhibit IV-3, constructed analogously, indicates that selection with the objective of pretrial crime control could have reduced the number detained from 170 to 98 with no increase in pretrial rearrests; alternatively, the rate of pretrial rearrest could be cut by about one-third without increasing the number detained. Further details of this analysis are contained in Section 5 of Appendix A.[6]

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[6] Some reviewers have objected to this argument on grounds of "selection bias." That is, they assume that defendants who did not in fact obtain release (and therefore could not appear in the sample used to estimate our models of pretrial misconduct) differ from the defendants in our sample in terms of at least one variable that: (a) was not an explanatory variable in our models, and (b) made the detained defendants (continued)

We make no value judgment here as to whether the legal objective of financial bond should be prevention of nonappearance or prevention of pretrial crime. Both are laudable goals, but given our limited existing knowledge, both require the selective imposition of sanctions based on error-prone predictions of future defendant behavior. We have attempted to show merely that statistical analysis of previous cases can assist D.C. judges in achieving an efficient trade-off between risk of either form of misconduct and unnecessary pretrial incarceration. It is reasonable to suppose that a statistical analysis incorporating D.C. Bail Agency data describing defendants more completely than our data would be of even greater assistance. However, since we were unable to obtain those data, such an analysis must await future research.

(continued) higher risks than the released defendants. Our situation is shared by those who attempt to forecast such variables as tomorrow's weather or next month's unemployment rate, by using the results of natural experiments that have occurred to predict the outcome of one that has not occurred.

For such an omitted relevant variable to invalidate our predictions about detained defendants, it would (c) have to be uncorrelated with all included explanatory variables. Otherwise, as is well known (see, for example, J. Kmenta, Elements of Econometrics, New York: Macmillan, 1971; pp. 392-395.), its omission would have caused us to erroneously attribute its effect to the correlated included variable, but not to ignore its effect completely. Since we know of no variable that satisfies conditions (a), (b), and (c), we continue to believe that the ability to satisfy financial conditions is a relatively poor predictor of nonappearance or pretrial rearrest.

For a more complete discussion of this issue, see William M. Rhodes, Plea Bargaining: Who Gains? Who Loses? PROMIS Research Publication no. 14 (INSLAW, 1978, forthcoming): II-15-II-20.

2. Judicial Discretion in Pretrial Release Decisions

The role of judicial discretion in setting pretrial release conditions was examined in the contexts of both descriptive statistics and a multivariate analysis.

Exhibits II-4a and II-4b reported the frequency distributions of release conditions set by the ten judges who made the majority of decisions during 1974. Since the position of arraignment judge is rotated monthly, it is reasonable to assume that all ten faced a similar mix of cases. Superficially, those tables show sizable differences in the rates at which judges assign personal recognizance, third-party custody, surety bond, and cash bond. However, more careful study reveals that the variation apparently arose from differences of judicial opinion regarding the appropriate roles of third-party custodians and professional bondsmen, rather than the larger question of when financial conditions should be imposed.

For felony cases, within the nonfinancial category, the ratio of personal recognizance to third-party releases ranged across judges from about 34-to-1 down to about 0.6-to-1. Within the financial category, the ratio of surety bond to cash bond ranged from about 120-to-1 down to about 1.25-to-1. Yet across all ten judges, the overall ratio of nonfinancial to financial releases deviated very little from the average of 1.7-to-1.

This impression was strengthened by the results of the multivariate analysis of pretrial release decisions. Although

judge identity was statistically significant in explaining all phases of the pretrial release decision, the number and identity of judges accounting for the significance varied across all stages. Thus, controlling for the effects of felony defendant and case characteristics, only two of the ten judges seemed to make the basic financial-nonfinancial release decision in a fundamentally different way from the hypothetical "average judge." This could be interpreted as a kind of consensus among the other eight judges as to how that basic decision should be made in felony cases. By using the same reasoning, the size of the consensus group decreases to four in choosing between the personal-recognizance and third-party forms of nonfinancial release. The consensus group grows to six in choosing between the surety and cash forms of financial bond, and to nine in setting the amount of bond.

Two other system-related characteristics seemed to affect various stages of the decision process. First, more experienced judges, as measured by years on the D.C. bench, were more likely to impose financial conditions in a given case. For defendants released on nonfinancial conditions, the more experienced judges opted for third-party custodians more frequently than other judges. Second, holding judge identity and case characteristics constant, pretrial release decisions seemed to respond in part to capacity problems in the D.C. Jail, where detained defendants are held. The more nearly full the jail during the month preceding arraignment, the less likely was the imposition of

financial conditions. Although this finding was expected, and is consistent with others' findings that judges respond to jail capacity constraints,[7] it is not clear how judges systematically receive information about available jail space.

In summary, it seems fair to say that while there was less than perfect consensus among the ten judges who carried most of the pretrial release burden during 1974, there was no statistical evidence of unwarranted judicial disparity in the decision-making process. The results did, however, reflect the controversy surrounding the appropriate role of professional bondsmen and third-party custodians in the pretrial release process.

An interesting future research problem would be an analysis of the success rates, by judge, of defendants placed on different forms of pretrial release. Supplemented by judge interviews, such research could help identify defendant and case characteristics that are currently not recorded but that help judges identify the defendants most likely to complete successfully the period of pretrial release.

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[7] In William M. Rhodes, "Jail as a Capacity Constraint," presented at Eastern Economic Association Annual Meetings, 1976, the empirical results suggest that as jail space is increased through more intensive use of pretrial release, judges are more likely to give sentences involving incarceration. When combined with our results, the implication is that pretrial and post-sentence incarceration are substitute uses of limited jail space.

3. Professional Bondsmen and Third-party Custodians

Chapter I contains a discussion of the controversial and declining role of professional bondsmen in the District of Columbia and elsewhere. Almost as controversial are the District's third-party custodians, of which the most active is an organization of ex-offenders called Bonabond. A detailed discussion of the controversy is beyond the scope of this report.[8] However, proponents point to the custodians' role of reducing economic discrimination by obtaining the release of high-risk, low-income defendants without posting bond with the court or paying a bondsman's fee. Opponents claim that supervision by the custodians is lax and that, as a result, defendants released into their custody are prone to pretrial crime and failure to appear. As noted above, the controversies surrounding both bondsmen and custodians are reflected in sizable variations across judges in the rate at which these forms of release are used.

Our descriptive statistics indicate that bondsmen potentially become involved in more cases than third-party custodians: 29 percent to 17 percent of all felony cases, and 12 percent to 9 percent of all misdemeanor cases. Surety bond is imposed more frequently in bail violation cases than

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[8] For representative examples of the debate, see Evaluation of Third Party Custody Programs, submitted to the D.C. Office of Criminal Justice Plans and Analysis by Lewin & Associates (Washington, D.C., 1975), and see Community Benefits: 1974 (Washington, D.C.: Bonabond, Inc., 1974).

in any other case type. Third-party custodians are prominent in violent-crime cases, such as homicide, sexual assault, robbery, and burglary, particularly those involving defendants with prior arrest records. The multivariate analysis revealed judge identity to be the most important factor in choosing between third-party and personal recognizance release, and between cash and surety bond. Other results, which indicate that a pending case, status as a parolee or probationer, and lack of a job all increase one's chances of obtaining third-party release, support the custodians' claim that they intentionally seek high-risk defendants as clients.

No similarly clear-cut picture emerged of defendants required to post surety bond. However, the analysis of whether a defendant held on bail eventually obtained release suggested that defendants employed for more than six months, if required to post surety bond, were found significantly more likely than other defendants to obtain release. The employment effect disappeared entirely for cash bond defendants, and for those employed for six months or less.

We have previously discussed the alleged laxity of third-party custodians in producing their clients when required in court. In Exhibit IV-4, the 1974 pretrial misconduct rates reported in Chapter II are compared for felony defendants on

Exhibit IV-4

Comparison of Pretrial Misconduct
Rates by Form of Release--1974 Felony Defendants

Type of Misconduct	FORM OF RELEASE				
	Personal Recognizance	Surety Bond	Cash Bond	Third Party	Aggregate*
Nonappearance	10.4%	10.2%	12.3%	11.6%	10.6%
Willful Nonappearance	3.5%	4.7%	6.1%	5.0%	4.1%
Rearrest	10.7%	18.2%	24.6%	13.8%	13.4%
Rearrest and Conviction	4.5%	7.5%	3.0%	5.6%	5.1%
Sample Size	2076	137	57	782	3825

*In computing aggregate estimates, outcomes in surety and cash bond cases are weighted by a factor of 4.525, to compensate for the rate at which these cases were sampled.

all forms of release. Small sample sizes preclude definitive comparisons. However, the appearance record of defendants released to third-party custodians seems slightly worse than the record of all defendants combined, yet better than defendants released on cash deposit bond. The exhibit also indicates that bondsmen successfully produce defendants for trial.

Other than personal recognizance, which is purportedly reserved for low-risk defendants, no form of release copes very capably with pretrial crime, as measured by rearrest. Unfortunately, the small sample sizes make a comparison based on rearrest leading to conviction impossible.

A different picture emerges when all explanatory variables other than form of release are statistically controlled in the multivariate analysis. Third-party custody emerges as a significantly positive predictor of general failure to appear, willful failure to appear, and pretrial rearrest. No other form of release had a statistically significant effect on any type of misconduct in the multivariate analysis.

Thus, our analysis supports portions of both sides of the controversy concerning third-party custodians. As the custodians claim, they appear to work with a very high-risk group of defendants. Yet even taking the defendant characteristics into account, their clients have an unexpectedly high non-appearance rate. Bondsmen, in contrast, deal with a slightly lower risk clientele, which has a better record of court

appearance but a worse record of pretrial rearrest. A more refined analysis would be required to learn the relative importance of screening as opposed to supervision in explaining the bondsmen's greater success.

4. Misconduct Prediction and Preventive Detention

In Chapter I, it was mentioned that pretrial release in the District of Columbia is a perennial concern of the U.S. Congress. At the time this report was written, H.R. 7747, a bill broadening the U.S. Attorney's power to request preventive detention, had been passed by the U.S. House of Representatives and was awaiting action by the U.S. Senate. Even though this research was not undertaken for the purpose of legislative analysis, it is interesting to examine certain provisions of this specific bill in light of the results summarized in Exhibit IV-1.[9]

Section I of the bill makes first-degree murder defendants eligible for pretrial detention if they present a risk of nonappearance or danger to the community. Since such defendants are already eligible for detention if they are on conditional release or have conviction records for violent crimes (under Subsection 23-1322(a)(2) of the D.C. Code), the newly affected group appears to consist of homicide defendants without extensive criminal histories.

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[9]The following discussion appears in slightly different form in Testimony on H.R. 7747 before the U.S. Senate Governmental Affairs Subcommittee on Governmental Efficiency and the District of Columbia, Feb. 6, 1978, Statement of Jeffrey A. Roth.

The results in Exhibit IV-1 indicate that homicide defendants are not, on average, especially poor risks for pretrial release. However, perhaps because judges fear the consequences of releasing these defendants without bond, the usual outcome of arraignment is to require financial bond. Thus, ability to pay rather than threat to the community determines which homicide defendants remain in jail. An advocate of Packer's Crime Control Model could reasonably support this provision. However, an advocate of the Due Process Model, in reaching a position, would have to weigh the constitutional issues surrounding preventive detention against the inequity of financial bond, as discussed in Chapter I.

Section I of the bill also extends pretrial detention eligibility to defendants accused of armed robbery or forcible rape, if they present an undue threat of nonappearance or danger to the community. A defendant accused of one of these crimes is already eligible for pretrial detention under Subsection 23-1322(a) of the D.C. Code if he has a record of convictions for violent crimes, if he is arrested while on conditional release, or if he is shown to present a danger to the community. Therefore, the only additional armed robbery and forcible rape defendants made eligible by this part of the bill are those who have no prior convictions for violent crimes, but who present a threat of nonappearance.

While our study did not single out forcible rape and armed robbery defendants specifically, Exhibit IV-1 does

report results for the broader charge categories of robbery and sexual assault. Defendants in these two groups were not found to be held on bond more often than other defendants. However, released robbery defendants were found to present a greater risk of pretrial crime than other defendants; released sexual assault defendants presented a smaller risk of nonappearance but no greater risk of pretrial crime than others. If these results hold with respect to the narrower charge categories used in the bill, then the rationale for adding this subgroup of armed robbery and forcible rape defendants would not be apparent even to advocates of the Crime Control Model. The extra pretrial crime risk associated with accused robbers appears to be already addressed by the existing preventive detention laws, and the appearance record of sexual assault defendants does not seem to warrant adding risk of nonappearance to the criteria for their preventive detention.

Section III of the bill makes a person arrested for any offense while on pretrial release for a felony offense eligible for a preventive detention hearing unless his release is revoked, and extends from five days to ten the time period during which a person arrested while on parole or probation may have his conditional release revoked because of the rearrest. If his conditional release is not revoked, the bill requires a preventive detention hearing. Since parolees and probationers accused of violent crimes are already eligible for preventive detention under Subsection 1322(a)(2) of the

D.C. Code, the group made eligible by this section contains pretrial releasees, parolees, and probationers charged with nonviolent crimes.

Exhibit IV-1 indicates that this group, like homicide defendants, is currently more likely than other defendants to receive financial release conditions, despite a pretrial misconduct risk no greater than that of other defendants. However, unlike the homicide defendant situation, the problem here may be that judges, reacting to claims that five days is too short a period for parole and probation authorities to consider release revocation adequately, may be attempting to remedy the problem by imposing financial conditions instead of depending on parole and probation authorities to act. Our results shed no light on the adequacy of the revocation period. However, if the ten-day period proves adequate, defendants in this group who present undue risk of nonappearance or additional crime presumably can be identified, and their releases revoked by the appropriate authorities, without benefit of a pretrial detention hearing. Therefore, with the extended time period, the need to broaden pretrial detention eligibility to this group would not be clear, even to advocates of the Crime Control Model.

B. LIMITATIONS OF ANALYSIS

In this study, we have analyzed data on the natural experiments performed each time a District of Columbia Superior Court judge set pretrial release conditions during 1974. The

primary data source for the analysis was PROMIS augmented by hand-collected data from court files. Two limitations of our approach should be recognized.

First, the D.C. Bail Agency routinely collects and verifies more extensive data on each defendant's socio-economic status and family ties than does the prosecutor's office. These additional data are collected precisely because they are believed to be correlated with defendant's behavior while on pretrial release. Because these additional data were not available to us, we were unable either to analyze their effects on the setting of pretrial release conditions or to control completely for their effects in analyzing the explanatory variables for which we did have data.

Second, like all researchers who have studied pretrial release, we have observed natural experiments, rather than randomized experiments in which the experimenter attempts to control for all pertinent explanatory variables. Therefore, the released defendants whose pretrial behavior we observed were not randomly drawn from the entire population of 1974 defendants.

Some would argue that this limitation destroys our ability to make statistical inferences concerning the population. However, the descriptive statistics presented in Chapter II demon-

strate that defendants released nonfinancially are not totally dissimilar to those held for cash and surety bond, in terms of alleged crime, prior history, and socioeconomic characteristics that we could observe. The fact that our sample of released defendants includes numerous persons charged with violent crimes, nonlocal residents, unemployed persons, and defendants with pending cases and extensive prior records--all considered adverse characteristics--increases the likelihood that our conclusions do not differ markedly from those that would be reached in a controlled experiment.

C. PRETRIAL RELEASE ISSUES NOT ADDRESSED IN THIS STUDY: AN OVERVIEW

In addition to these limitations of method and data, at least four important pretrial release issues are not addressed in detail in this report. This chapter concludes with an overview of research on those issues.

1. Pretrial Incarceration and Conviction Probability

It is often argued that pretrial incarceration increases the probability of conviction, because the defendant is prevented from aiding in his own defense and because the unpleasantness of jail encourages defendants to plead guilty in exchange for possible sentence reductions. This contention was not supported in a 1927 study by Beeley,[10] but has since been

[10] Arthur L. Beeley, The Bail System in Chicago (Chicago: The University of Chicago Press, 1927; reprinted in 1966).

supported by Morse and Beattie,[11] Foote,[12] Ares, Rankin, and Sturz,[13] and Rankin.[14] A recent five-city evaluation of pretrial release programs found no change in the distribution of dispositions as the rate of personal recognizance releases increased,[15] a finding which seems to contradict the assertion.

The question was not addressed in this report, because a related question--whether release on recognizance decreases

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11 Wayne L. Morse and Ronald H. Beattie, "Survey of the Administration of Criminal Justice in Oregon, Report No. 1," Oregon Law Review 11, no. 4 (Supplement) (June 1937): 86-117, 148-50.

12 Caleb Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia," University of Pennsylvania Law Review 103 (1954): 1031-79; "The Administration of Bail in New York City," University of Pennsylvania Law Review 106 (1958): 693-730.

13 Charles Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," New York University Law Review 38 (1963): 67-95.

14 Anne Rankin, "The Effect of Pretrial Detention," New York University Law Review 39 (1964): 641-55.

15 William M. Rhodes, Thomas Blomberg, and Steven T. Seitz, "An Evaluation of the LEAA Replications of the Des Moines Community-Based Corrections Program," unpublished manuscript available from the Institute for Law and Social Research, Washington, D.C., 1977.

conviction probability or discourages guilty pleas--is examined by Rhodes in another PROMIS Research report.[16] He found that controlling for other variables, release on recognizance significantly reduced the probability of conviction in 1974 District of Columbia robbery and burglary cases, had a less significant effect in assault cases, and had no effect in larceny cases. Among the four crime groups, he also found recognizance release to increase the probability of going to trial in assault cases only. In another PROMIS Research report, Hausner and Seidel[17] report that among cases in which a plea was entered, the plea occurred 17 days earlier in cases in which bond was required than in nonfinancial release cases. These findings are generally consistent with the argument, although they could not be said to lend strong support.

2. Pretrial Incarceration and Conviction Probability

For similar reasons, it is often argued that pretrial incarceration increases the expected severity of sentences given to convicted defendants. This contention was supported in the

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16 Rhodes, Plea Bargaining: Who Gains? Who Loses?: Technical Appendix.

17 Jack Hausner and Michael Seidel, An Analysis of Case Processing Time in the District of Columbia Superior Court, PROMIS Research Publication no. 15 (INSLAW, 1978, forthcoming): III-14.

Foote, Rankin, and Ares, Rankin, and Sturz studies cited above. Landes[18] found a positive and significant effect of the defendant's bond amount on his length of sentence; in his model, that relationship indicates that judges set high bond to minimize the possibility of disappearance for defendants facing a long sentence. Controlling for other defendant characteristics, he also found a positive and significant relationship between number of days of pretrial detention and sentence length, lending support to the argument.

Results reported by Dungworth[19] in another PROMIS Research report also lend partial support to the contention. In that study, convicted defendants who had not been released on recognizance were found more likely to receive jail terms, and to receive longer jail terms, than were own-recognizance releasees. It is not clear whether this represents a direct effect of pretrial release status on sentence, or the joint effect of some case or defendant characteristic on both pretrial release status and sentence.

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18 William M. Landes, "Legality and Reality: Some Evidence on Criminal Procedure," Journal of Legal Studies 3 (June 1974): 331-2, 335.

19 Terence Dungworth, An Empirical Assessment of Sentencing Practices in the Superior Court of the District of Columbia, PROMIS Research Publication no. 17 (INSLAW, 1978, forthcoming): VII-5, VII-13, VII-18.

CONTINUED

2 OF 3

3. Pretrial Incarceration and Time in System

Due process advocates frequently argue that defendants who are incarcerated before trial should receive priority in court scheduling, to minimize the period of detention preceding adjudication. This priority is accorded in misdemeanor cases but not felony cases, according to findings of the Hausner and Seidel study cited above. Among misdemeanor defendants, they found that those of whom bond was required were tried 24 days faster and were dismissed five days earlier than other defendants receiving those respective dispositions. No similar effect was found for felony defendants.

4. Pretrial Delay and Pretrial Misconduct

Finally, it is argued that the incidence of pretrial misconduct could be reduced by shortening the time from arrest to case disposition. A 1970 study published by the National Bureau of Standards found the rearrest probability to increase with the length of the pretrial period.[20] However, since defendant characteristics were not statistically controlled, one cannot infer whether their finding represents a cause-effect relationship or an artifact of more intensive prosecutive effort against crime-prone defendants, who are more likely than others to be rearrested on any given day.

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20 J.W. Locke, et al., Compilation and Use of Criminal Court Data in Relation to Pre-Trial Release of Defendants: Pilot Study, National Bureau Standards Technical Note 535 (Washington, D.C.: U.S. Department of Commerce, 1970).

A recent study by Clarke, et al.,[21] reported that controlling sequentially for sex, age, race, income, employment, prior arrest, offense type and seriousness, and form of release, the rate at which cases survive without failure to appear or rearrest decreases over time. They point out that a lack of degrees of freedom prevented them from controlling for these variables jointly.

We believe that release conditions, misconduct incidence, and time to disposition are all jointly determined: indeed, it is plausible to assume that a defendant, pondering whether or not to flee, weighs the approach of a threatening event such as trial more heavily than the time since arrest; under this assumption, speedier trials would merely encourage earlier failures to appear. Findings reported by Schaffer[22] and in Chapter II of this study that accused misdemeanants fail to appear at the same rate as accused felons, despite far shorter case processing times on average, are consistent with this hypothesis.

Those findings, together with the lack of adequate statistical controls in previous studies, make us wary of claims that speedier trials are a panacea for pretrial crime and

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21 S.H. Clarke, J.L. Freeman, and G.G. Koch, "Bail Risk: A Multivariate Analysis," Journal of Legal Studies vi, no. 2 (June 1977): 341-85.

22 Andrew Schaffer, Bail and Parole Jumping in Manhattan in 1967 (New York: Vera Institute of Justice, 1970).

failure to appear. Yet we are uncomfortable arguing that a longer pretrial exposure period does not increase the probability of misconduct, holding other factors constant.[23] Moreover, the same degrees-of-freedom problem faced by Clarke, et al., prevented us from constructing and testing an adequate model of the relationship between time to disposition and the probability of misconduct. The issue appears to be an important and unsettled question, which should be addressed in future research.

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[23] Indeed, we report in this chapter that holding other factors constant, felony defendants were found more likely than misdemeanor defendants to be rearrested while on pretrial release. Since Williams (Kristen Williams, The Scope and Prediction of Recidivism, PROMIS Research Report no. 10 [INSLAW, 1978, forthcoming] IV-11, VII-1-3) did not find the felony/misdemeanor distinction correlated with either the frequency or seriousness of rearrest over a five-year period, our results could be an artifact of a longer average pretrial release period for accused felons than for accused misdemeanants.

APPENDIX A

A Structural Model of Pretrial Release and Misconduct

1. Introduction

In a pathbreaking article, Landes[1] developed a microeconomic model of the bail system and of pretrial misconduct by defendants, including both additional criminality and failure to appear for trial. Within the framework of this model, he defined costs and benefits of the bail system to the defendant and the community, examined the incentive and welfare effects of an alternative bail system in which the defendant is paid to remain in prison instead of paying for his pretrial freedom, and developed hypotheses about the behavior of both defendants and judges who set bond. In a later article,[2] he tested several of these hypotheses using data on a sample of 858 indigent New York City defendants. A major conclusion of that paper is that the New York City bail system operates as if its objective were to prevent pretrial crime by defendants, rather than to ensure the defendant's appearance for trial.

The analysis reported in this appendix adopts, with only minor modifications, Landes's theory of the bail system and tests similar hypotheses using 1974 data on defendants in the District of Columbia. Such a replication is of interest for at least four reasons.

First, as explained in Chapter I, the D.C. judicial system is governed by the 1966 Bail Reform Act, which prohibits consideration of the defendant's possible threat to the community while setting financial release conditions, and the 1970 D.C. Court Reform Act, which provides for the preventive detention, without bond, of potentially dangerous defendants under certain circumstances. In this legal setting, confirmation of Landes's conclusion that financial bond is being used to prevent future criminality would demonstrate systematic underutilization of a legal means of detaining dangerous defendants in favor of an extralegal means of doing so.

Second, data limitations prevented Landes from studying female defendants and nonindigent defendants. There is reason to believe the bail system treats both groups differently from indigent males. Exhibit II-14 in Chapter II indicates that female felony defendants are more likely to be released on nonfinancial conditions than are male felony defendants. The Eighth Amendment prohibition against excessive bond suggests that bond may be set with an eye toward the defendant's ability to pay, a proposition that is difficult to test using a sample of indigents. Since the PROMIS data base[3] contains information on all D.C. defendants, including females (about 15 percent) and nonindigents (10 percent), we are better able to study the effect of income and sex on release conditions, controlling for the effects of crime type and other relevant variables.

Third, data limitations prevented Landes from distinguishing between "willful" failure to appear (i.e., a defendant's decision not to appear) and "procedural" failure to appear (i.e., failure to appear because of inadequate notice or other administrative problems). In fact, he noted that his sample included 38 failures to appear by defendants recorded as being in the custody of the Corrections Department: an extreme example of procedural failure to appear. Our data base permits us to record whether a failure to appear (measured by the issuance of a bench warrant) was followed by rearrest for Bail Reform Act violation, the D.C. charge for willful flight. Thus, we are able to construct a proxy for "willfulness": a Bail Reform Act rearrest for reapprehended defendants, or an open disposition 8 months after the end of the sample period for others. Using this proxy, we can test hypotheses with respect to both willful and procedural failure to appear.

Fourth, we were able to collect data on detention facility population. This enabled us to test hypotheses on the relationship between the pretrial release decision and the size of the existing detained population.

The remainder of this appendix is organized as follows. Section 2 specifies a model of the setting of pretrial release conditions, the process of obtaining release, the occurrence of additional pretrial crimes, and failure of the defendant to appear for trial. When relationships in the present model

differ from those of Landes, the reasons for the deviations are explained. Section 3 presents the hypotheses to be tested in this appendix. Legal or theoretical motivation for each hypothesis is presented; where appropriate, the Landes hypotheses are adapted to idiosyncrasies of the D.C. criminal justice system. Section 4 presents the results of model estimation and hypothesis tests. Section 5 discusses some implications of the results.

2. Structural Model

As analyzed in this appendix, the pretrial release process occurs in three stages: the setting of release conditions by a judge, the obtaining of release by a defendant, and potential pretrial misconduct by a defendant, meaning either criminality or failure to appear, or both. This section presents a theory of the process, which leads to the specification of a system of equations to be estimated in Section 4. Because the theory presented here differs only slightly from that presented by Landes,[4] the theoretical discussion is relatively brief, emphasizing only the highlights of the Landes model and our deviations from it. For a fuller treatment, the interested reader is referred to the Landes article.

With Landes, we assume that N defendants have been arrested on a given day. For defendant i, information has been presented to a judge on u_{1i}, a vector of socioeconomic characteristics thought to influence the defendant's gain from

being released to await trial, and u_{2i}, a vector describing the defendant and his alleged crime in terms of variables thought to predict harm he will inflict on the community if he is released to await trial. A "residual" term, v_i, unobserved by the criminal justice system, is also assumed to affect the i^{th} defendant's gain from pretrial release.

On the basis of u_1 and u_2, the N defendants are divided into K mutually exclusive and exhaustive subgroups containing $n_1, \ldots, n_K$ defendants each. Within the k^{th} subgroup, all defendants are identical in terms of u_1 and u_2 and therefore receive identical pretrial release conditions.

Under any set of conditions, b_k of the n_k defendants will actually obtain release. For the subgroup, the gains from release may be written:

$$G_k = G(b_k, s_k, u_{1k}, v_1, v_2, \ldots, v_{b_k}), \tag{1a}$$

where s_k, pretrial supervision status, which does not appear in the Landes model, is a discrete variable denoting pretrial release options available in the District of Columbia. Before defining s in detail, we delete the unobserved residuals and the subscript k, since the remaining analysis is carried out within a single subgroup. The resulting defendant gain function may be written:

$$G = G(b, s, u_1), \tag{1b}$$

and s may be defined in more detail.[5]

As explained in Chapter I, District of Columbia defendants are normally released on one of the following conditions: personal recognizance ($s = 0$), which entails no financial obligation and negligible supervision for the defendant; third-party custody ($s = 1$), which carries no financial burden but does require supervision by a responsible custodian; cash bond ($s = 2$), where the defendant normally posts 10 percent of the amount with the court, receives 9 percent back if he appears for trial, and is unsupervised while on release; and surety bond ($s = 3$), where the defendant pays a private bondsman 10 percent (nonrefundable) of the amount and is subject to whatever supervision the bondsman deems necessary.

Because third-party custody imposes the burden of supervision, it is assumed that $G(b, 0, u_1) > G(b, 1, u_1)$ for any b and u_1. Because surety bond, relative to cash bond, imposes a greater financial loss and probable supervision burden on the defendant, it is assumed that $G(b, 2, u_1) > G(b, 3, u_1)$ for any b and u_1. It is also assumed that the 1 percent loss under cash bond exceeds the monetary and psychic cost of supervision by a third party, which implies $G(b, 1, u_1) > G(b, 2, u_1)$. Thus, G is a decreasing step function of the variable s. With Landes, we assume that defendants are released in decreasing order of gains, so that $G_b > 0$, $G_{bb} < 0$ (where $G_b = \partial G/\partial b$ and $G_{bb} = \partial^2 G/\partial b^2$). Since the defendant's gain is adversely affected by more severe supervision, we

assume $G_{bs} < 0$; otherwise interactions are assumed to be negligible. Discussion of u_1 is deferred to Section 2.

The second gain, which accrues to the community from releasing defendants, is a reduction in the cost of guarding, feeding, and housing detained defendants in jail. These savings may be specified as:

(2) $$D = D(b, c^*),$$

where D, the value of detention savings, is equivalent to Landes's J, and c^* is the number of defendants already being detained due to decisions in previous periods.[6] With Landes, we assume increasing marginal cost of detention, so that $D_b > 0$, $D_{bc^*} > 0$, $D_{bb} < 0$, i.e., the marginal savings fall as the detention facility becomes less crowded. For calendar year 1977, the average variable cost of detention was estimated at $28.29, based on data supplied by the Department of Corrections.

With Landes, we recognize two categories of cost the releasees may impose on society--by committing additional crimes, and by failing to appear for trial.[7] Judicial expectations about the first type of cost are formed according to the function:

(3) $$H_1^* = H_1^*(b, u_2, j),$$

where H_1^* is the expected cost of pretrial crime by the defendant subgroup, u_2 is a vector of characteristics thought to predict future crime and/or failure to appear by the defendants,

and j denotes the identity of the judge setting pretrial release conditions. It is assumed that $H^*_{1b} > 0$; since the defendants within the subgroup are perceived as identical in terms of u_2, $H^*_{1bb} = 0$ (see note 5).

The second way a releasee may impose costs on society is by failing to appear for trial. His failure to appear imposes direct costs of attempted reapprehension, a waste of judicial resources when his case is continued, and a waste of time by witnesses who appear in court to no avail. In addition, if defendant disappearance prevents justice from being carried out, the loss of future deterrent and incapacitative effects from punishment may be an additional cost. These costs are subsumed in H_2, about which judicial expectations are formed according to:

$$H^*_2 = H^*_2(b, u_2, m, s, j, i^*), \tag{4}$$

where m is the dollar value of bond set by the judge for defendants in the subgroup and forfeited by the defendant or bondsman (depending on s) if the defendant does not appear for trial. Assuming the loss of bond acts as a deterrent to flight implies $H^*_{2m} < 0$; no assumption is made about H^*_{2mm}. An incentive to flight is provided by large i*, the expected sentence for defendants in this subgroup. It may be thought of as the product of sentence for those convicted of the crime charged and the probability of conviction. Since a high expected sentence is seen as an inducement to flight, $H^*_{2i^*} > 0$

and $H^*_{2bi*} > 0$; no assumption is made about the sign of H^*_{2i*iI}. These counter incentives to flight--bond and expected sentence--are assumed to be independent, i.e., $H^*_{2mi*} = 0$. If the cost of reapprehension is the same for each defendant in the subgroup who disappears, then within a subgroup $H^*_{2b} > 0$, $H^*_{2bb} = 0$.

The role of s in forming expectations about failure to appear is complex. As explained in Chapter I, the law governing the setting of release conditions requires the judge to consider s = 0, 1, 2, 3 in that order and impose the first one which, in his opinion, will guarantee the defendant's appearance. This requirement suggests that framers of the law believed that, holding other arguments constant, higher values of s generate smaller values of H_2. However, as discussed at length in Chapter I, the third-party custodians in D.C. are controversial; many judges are known to believe they perform no useful function. Therefore, we assume that, for b, u_2, m, j, and i* constant,

$$H^*_2(b,u_2,0,0,j,i^*) \geq H^*_2(b,u_2,0,1,j,i^*)$$
$$> H^*_2(b,u_2,m,2,j,i^*) > H^*_2(b,u_2,m,3,j,i^*).$$

With Landes, we define an expected net benefit function for pretrial release, equal to the difference between gains from release and expected costs of release:

(5) $\Pi = G(b,s,u_1) + D(b,c^*) - H^*_1(b,u_2,j) - H^*_2(b,u_2,m,s,j,i^*)$

Optimality requires that the judge select values of s and b

for the subgroup that maximize expected community benefit. However, for $s > 1$, the judge does not control b directly. Instead, we assume with Landes that the defendants in the subgroup have a demand function for release that may be written as:

$$b = b(m, s, u_1). \tag{6}$$

Since an individual defendant will pay bond in amount m only if the residual term v_i causes him to place a value exceeding m on pretrial freedom, it is plausible to assume $b_m < 0$. Since greater values of s are assumed to reduce defendant gains from release, it is also plausible to assume $b(0,0,u_1) > b(0,1,u_1) > b(m,2,u_1) > b(m,3,u_1)$ for given values of m and u_1. Ignoring problems of discontinuity, this may be stated as $b_{ms} < 0$.

Concluding our modified version of Landes's model, equation (5) may be maximized with respect to m and s after substitution of equation (6). For any value of s, this yields the condition that:

$$\frac{\partial \Pi}{\partial m} = b_m(G_b + D_b - H^*_{1b} - H^*_{2b}) - H^*_{2m} = 0. \tag{7}$$

This condition may be interpreted to require that the marginal defendant gains and detention savings obtained at the optimal value $\hat{m}$ must equal the marginal harm incurred by doing so. The terms H^*_{1b} and H^*_{2b} indicate that reducing m to $\hat{m}$ releases additional defendants who

may misbehave; H^*_{2m} indicates the lessened incentive to appear for defendants who were willing to obtain release at higher bond amounts.

Because our model considers the simultaneous setting of s and m, a possibility of nonunique solutions arises, which was not a problem in the Landes model. Consider Exhibit A-1, which illustrates two optimal combinations of m and b for a defendant subgroup; the two equilibria differ in the selection of s.

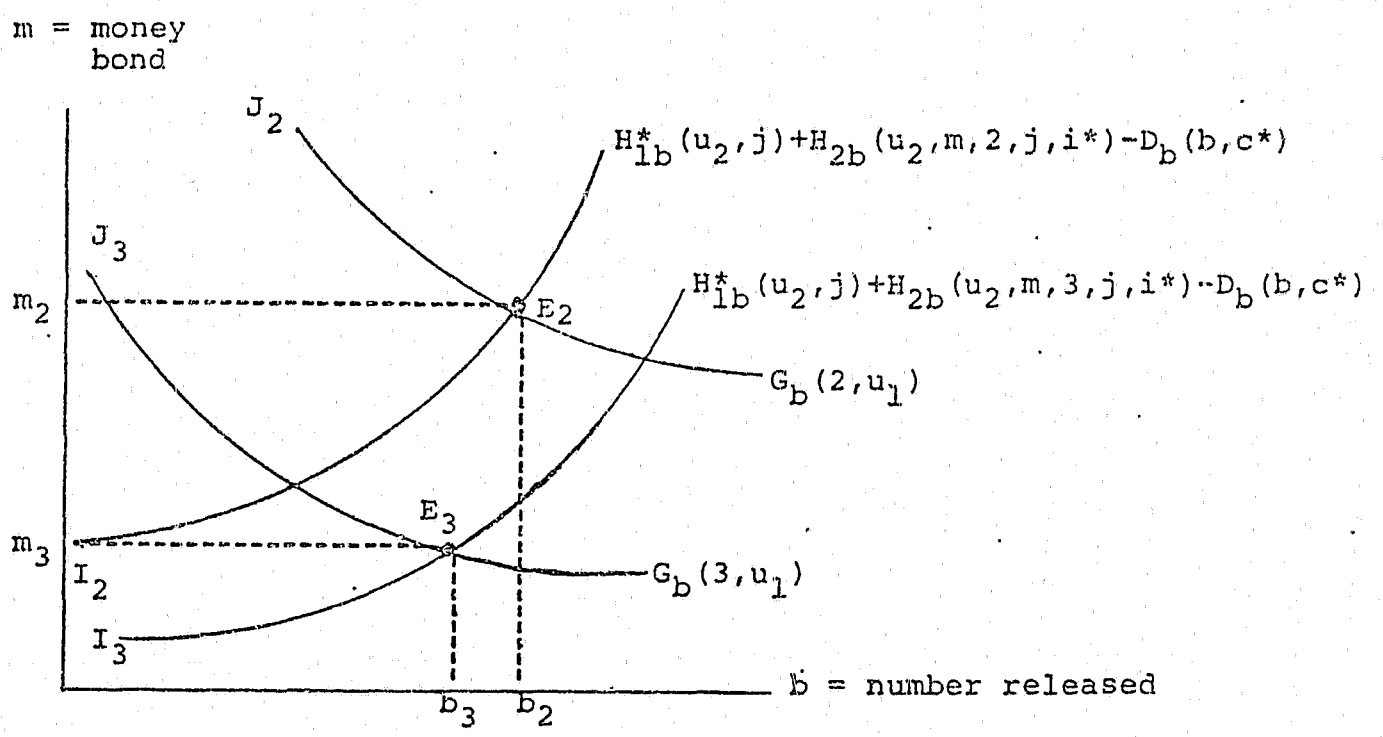

Exhibit A-1

Nonunique Equilibria for Cash and Surety Bond

Line I_2 illustrates the marginal expected cost function for releasing defendants in a given subgroup under cash bond

i.e., the right-hand side of equation (7) for s = 2. Line J_2 illustrates the marginal gain to defendants from release on cash bond, i.e., the left-hand side of equation (7) for s = 2. The equilibrium point defined by equation (7) appears at point E_2. Similarly, lines I_3 and J_3 define an equilibrium point at E_3 for s = 3. The directions of the shifts, explained above, guarantee that $m_3 < m_2$, i.e., that the bond amount paid by defendants will be less if surety bond is required than if cash bond is required.[8] In the exhibit, moreover, fewer defendants are released under surety bond than under cash bond; in general, the relative number released depends on whether the choice between cash and surety shifts the defendants' marginal gain function more or less than the judge's expected cost function; therefore, it cannot be predicted in general.[9]

The problem of nonunique equilibria is especially significant in the choice between release on personal recognizance and release to a third party custodian. Not only would the equilibria corresponding to E_2 and E_3 be approaching a corner solution at m = 0 and b = n; but, in the eyes of many judges, appointing a custodian has little effect on either the defendant's gain function or the community's loss function.

The second-order condition for maximization of equation (5) is useful in deriving testable hypotheses concerning the pretrial release system. Differentiating equation (7), one obtains the condition:

$$(8) \qquad \frac{\partial^2 \Pi}{\partial m^2} = b_{mm}(G_b+D_b-H^*_{1b}-H^*_{2b}) - H^*_{2bm}-H^*_{2mm} < 0,$$

which implies that as money bond m is reduced to the optimal value $\hat{m}$, marginal harm must be increasing more rapidly than marginal benefit. This is a less strict condition than illustrated in Exhibit A-1, where marginal gain is actually decreasing.

Equation (7) expresses a relationship between the judge's behavior in setting bond and the variables s, u_1, c*, u_2, j, and i*. The properties of this relationship, which are used in the next section to generate hypotheses about the setting of pretrial release conditions, become more readily apparent if the total differential of equation (7) is set to 0. Abstracting from discontinuities, this may be written:

$$(9) \qquad d\left(\frac{\partial \Pi}{\partial m}\right) \equiv \Phi_{\hat{m}} d\hat{m} + \Phi_s ds + \Phi_{u_1} du_1 + \Phi_{c^*} dc^* + \Phi_{u_2} du_2 + \Phi_j dj + \Phi_j dj + \Phi_{i^*} di^* = 0,$$

where:

$\Phi_{\hat{m}} = \frac{\partial^2 \Pi}{\partial m^2} < 0$ by the second-order condition;

$\Phi_s = [b_{ms}(G_b+D_b-H^*_{1b}-H^*_{2b}-H^*_{2m}) + b_m(G_{bs}-D_{bs}-H^*_{1bs}-H^*_{2bs}-H^*_{2ms})]$, of indeterminate sign, depending on the relative magnitudes of the expected impact of pretrial supervision on flight and the negative impact of supervision on defendant utility;

$\Phi_{u_1} = [b_{mu_1}(G_b+D_b-H^*_{1b}-H^*_{2b}-H_{2m}) + b_m(G_{bu_1}+D_{bu_1}-H^*_{1bu_1}-H^*_{2bu_1}-H^*_{2mu_1})]$, which, if $b_{mu_1} = D_{bu_1} = H^*_{1bu_1} = H^*_{2bu_1} = H^*_{2mu_1} = 0$, will be opposite in sign to G_{bu_1} (i.e., negative if increases in u_1 increase the defendant's gain from pretrial release);

$\Phi^*_c = b_m D_{bc*} < 0$ since $b_m < 0$, $D_{bc*} > 0$;

$\Phi_{u_2} = [b_m(-H^*_{1bu_2}-H^*_{2bu_2})-H^*_{2mu_2}] > 0$ if u_2 is a "negative" characteristic, such as incidence of prior failures to appear, which is thought to increase the risk of pretrial harm and thought not to intensify the disincentive effect of money bond on flight (i.e., $H^*_{1bu_2}, H^*_{2bu_2} > 0$, $H^*_{2mu_2} \geq 0$);

$\Phi_j = [b_m(-H^*_{1bj}-H^*_{2bj}) - H^*_{2mj}] > 0$ if judge j tends to estimate the risk of pretrial harm relatively highly (i.e., if $H^*_{1bj}, H^*_{2bj} > 0$, $H^*_{2mj} \geq 0$);

$\Phi_{i*} = b_m(-H^*_{2bi*})-H^*_{2mi*} > 0$ since $b_m < 0$, $H^*_{2bi*} > 0$, $H^*_{2mi*} = 0$ by assumption.

Equation (9) is a theoretical equation modeling the judge's behavior in setting pretrial release conditions; equation (6) is a theoretical equation modeling the defendant's behavior in obtaining pretrial release under financial conditions. To complete the system, we may write equations modeling the cost of harm caused by released defendants. These are analogous

to equations (3) and (4); however, they describe actual behavior rather than the judge's expectations about behavior. The cost of harm from future crime by released defendants in the subgroup is given by:

$$H_1 = H_1(b, u_2). \tag{10}$$

The cost of failure to appear is given by:

$$H_2 = H_2(b, u_2, m, s, i^*), \tag{11}$$

where derivative signs are the same as those of equation (4).

Equations (6), (9), (10) and (11), then, model the complete system to be studied empirically in Section 4. However, before proceeding to estimation, several testable hypotheses concerning pretrial release are developed in Section 3.

3. Hypotheses

In this section the system containing equations (6), (9), (10), and (11) is used to develop several hypotheses concerning the setting of pretrial release conditions by judges, the satisfaction of financial conditions by defendants, and pretrial crime and failure to appear by released defendants.

Pretrial Release Conditions

In this section, we develop hypotheses involving the effect of c^*, u_2, j, and i^* on optimal money bond, $\hat{m}$. Since, as was argued above, increases in s, like increases in $\hat{m}$, reduce the number of defendants released and reduce marginal

expected cost of pretrial harm, these hypotheses are tested in Section 4 with respect to both $\hat{m}$ and s.

H1: A larger jail population at the time of arraignment is associated with lower bond, ceteris paribus

By setting all differentials except dc* and $d\hat{m}$ to zero, then solving equation (9), one may write:

$$\frac{d\hat{m}}{dc^*} = - \frac{\phi_{c^*}}{\phi_{\hat{m}}} < 0. \tag{12}$$

Relation (12) expresses the proposition that a larger existing detained population decreases optimal bond. Verbally, the reasoning is that if the marginal cost of detention is increasing, the savings from releasing an additional defendant increase with the size of the detained population. In our model, the judge captures these savings by setting lower bond amounts, cet. par. In Section 4, this hypothesis is tested by examining the power of jail population during the month preceding arraignment to "explain" pretrial release conditions.

H2: Higher bonds are associated with more serious charges, and with charges indicating a propensity toward flight from prosecution, ceteris paribus

Setting all differentials except du_2 and $d\hat{m}$ to zero and solving equation (9), one may write:

$$\frac{d\hat{m}}{du_2} = \frac{-\phi_{u_2}}{\phi_{\hat{m}}} . \tag{13}$$

As explained following equation (9), a "bad" characteristic, thought to increase the risk of pretrial misbehavior, will cause a positive value of Φ_{u_2}, hence a positive value of $\frac{d\hat{m}}{du_2}$, i.e., a higher optimal money bond. The seriousness of the alleged crime is also often assumed to be positively correlated with the seriousness of future crimes he may commit.[10] Although no index of seriousness is used in Section 4, components of one such index (e.g., extent of injuries to victims) do appear, as do dummy variables representing charge categories.

H3: Higher bonds are associated with more extensive criminal histories, and with histories indicating a propensity toward flight from prosecution, ceteris paribus

By the argument following equation (13), "bad" characteristics in the defendant's criminal record, also a part of u_2, should be associated with more severe pretrial release conditions.

H4: Higher bonds are associated with defendant characteristics indicating lack of stability or lack of ties to the community, ceteris paribus

Defendant characteristics such as a nonlocal residence or lack of employment are often thought to predict failure to appear. Equation (13) predicts that such variables are associated with higher bonds; in fact, as explained in Chapter I, the D.C. Code encourages judges to take many of them into

account. The effects of such extralegal variables as age, race, and sex of defendant are also examined in Section 4.

H5: Controlling for other factors, pretrial release conditions are partially explained by the judge setting them

Setting all differentials except $d\hat{m}$ and dj to zero and solving equation (9), one may write:

$$\frac{d\hat{m}}{dj} = \frac{-\Phi_j}{\Phi_{\hat{m}}} \quad (14)$$

While we do not presume to anticipate the sign of $\frac{d\hat{m}}{dj}$ for a particular value of j, the equation indicates that, in general, the release conditions for a given defendant are not independent of the judge setting them. The importance of arraignment judge identity in explaining pretrial release conditions is tested in Section 4 by means of dummy variables and a measure of the judge's experience on the D.C. bench.

H6: A higher probability of conviction and a higher maximum statutory sentence for the crime of which the defendant is accused are associated with a higher bond, ceteris paribus

Setting all differentials except $d\hat{m}$ and di^* to zero, and solving equation (9), one may write:

$$\frac{d\hat{m}}{di^*} = \frac{\Phi_{i^*}}{\Phi_{\hat{m}}} > 0 . \quad (15)$$

Relation (15) suggests that a judge, anticipating that a larger expected sentence gives the defendant a greater incentive to fail to appear, will set a higher bond as a counter-incentive. The expected sentence, in turn, can be decomposed into the probability of conviction and an index of potential sentence if convicted. The hypothesis is tested in Section 4 using maximum statutory sentence for the crime charged and two proxies for the probability of conviction: the subjective estimate of the assistant prosecutor who screened the case, and a vector of exogenous variables found by Forst and Brosi[11] to predict the probability of conviction.

H7: Low income defendants receive lower money bond, ceteris paribus

Setting all differentials except $d\hat{m}$ and du_1 to zero and solving equation (9), one obtains:

$$\frac{d\hat{m}}{du_1} = -\frac{\Phi_{ul}}{\Phi_{\hat{m}}} . \tag{16}$$

As explained following equation (9), Φ_{ul}, therefore $\frac{d\hat{m}}{du_1}$, is negative if u_1 is defined so that increases in u_1 increase the defendant's gain from pretrial release. Heuristically, ceteris paribus, net benefit is greater for defendants with greater u_1; this encourages the judge to release such defendants in greater numbers by setting lower bond.

We lack data on many defendant characteristics that might appear in u_1: availability of paid vacation if employed,

marital status, and savings, for example. Using the defendant's zip code, however, we were able to determine whether a local resident defendant lives in a low-income area; this variable was used as a proxy for whether the defendant had a low income.

Landes (1973, p. 88) argued that foregone earnings tend to rise with wealth, which suggests that, ceteris paribus, high income defendants have a greater marginal benefit from pretrial release. We argue, on the contrary, that low-income defendants are less likely to have either paid vacation time or sufficient savings to see their families through a period of pretrial incarceration, and are more likely to suffer decreased future earnings following pretrial incarceration.[12] Therefore, treating "low income" as a variable that increases the defendant's gain from pretrial release, we test the hypothesis, using our proxy, in Section 4.

Obtaining Release

In specifying equation (6), several assumptions were stated about the behavior of defendants for whom financial release conditions are set. Based on those assumptions, we may state three testable hypotheses about defendants' demand for pretrial release, for those who are not released immediately on personal recognizance or to a third party.

H8: The higher the amount of money bond, the lower the probability that a defendant will obtain release

Following equation (6), we adopted Landes's argument that bond in amount $\hat{m}$ would likely be paid by only those defendants who placed a value exceeding $\hat{m}$ on pretrial freedom. It follows that, ceteris paribus, a lower bond amount will result in the release of more defendants, an assumption we expressed as $b_m < 0$. In Section 4 we test this hypothesis.

H9: For any bond amount, a higher proportion of defendants will be willing to obtain release by posting cash bond than by obtaining surety bond

Following equation (6), it was argued that stricter supervision, denoted by larger values of s, reduces defendants' gain from release; hence, it reduces the proportion of defendants willing to pay bond of any given amount m. We test this hypothesis in Section 4 by evaluating the significance of an interaction term between type of release condition (surety or cash) and amount of bond as a predictor of whether release was obtained.

H10: Low-income defendants are less likely to obtain release at any given bond amount than are other defendants

In the discussion of hypothesis H7, we argued that, ceteris paribus, a low-income defendant gains more from pretrial release than does a high-income defendant, so that optimizing behavior will lead the judge to set lower money bond for low-income defendants than for other defendants. However, if wealth

(out of which bond may be posted) is positively correlated with income,[13] and if a high- and low-income defendant have an identical utility function for wealth that implies decreasing marginal utility for wealth, then posting bond of amount m causes the low-income defendant greater disutility than the high-income defendant. If a defendant's low-income status increases his disutility of paying bond in amount $\hat{m}$ by more (less) than it increases his marginal utility from obtaining release, then low-income defendants will post bond in amount $\hat{m}$ at a lower (higher) rate than will other defendants. Using residence in a low-income area as a proxy for low-income status, we examine the effect of income on release rate in Section 4.

Pretrial Misconduct

Equation (10) models the rate at which released defendants commit additional crimes before trial, and equation (11) models the rate at which released defendants fail to appear for trial. Using these equations, we may state three hypotheses to be tested in Section 4 about pretrial crime and failure to appear.

Development of two of these hypotheses is more straightforward in terms of the total differentials of equations (10) and (11). These are given, respectively, by:

$$dH_1 = H_{1b}db + H_{1u_2}du_2, \tag{17}$$

and by

$$dH_2 = H_{2b}db + H_{2u_2}du_2 + H_{2m}d\hat{m} + H_{2s}ds + H_{2i^*}di^*. \tag{18}$$

The three hypotheses are as follows.

H11: Money bond and supervision deter failure to appear but not pretrial crime

It is apparent that money bond and supervision status appear in equation (18) as deterrents to flight, but not in equation (17) as deterrents to pretrial crime. This is to be expected, since cash or surety bond is forfeited only upon failure of the defendant to appear, not upon rearrest of the defendant. We test this hypothesis in Section 4, expecting that bond amount and supervision status help explain failure to appear but not additional crime.

H12: Characteristics of the defendant (criminal history, flight history, and socioeconomic characteristics) used by judges to set release conditions do affect the probabilities of failure to appear and pretrial crime

With respect to pretrial crime, this hypothesis is a straightforward interpretation of equation (17). The situation is somewhat more complex with respect to failure to appear. Setting all differentials of equations (9) and (18) to zero except $d\hat{m}$ and du_2, and substituting, one obtains:

$$(19) \qquad dH_2 = H_{2u_2}du_2 + H_{2m}d\hat{m} = du_2\left[H_{2u_2} - \frac{\Phi_{u_2}H_{2m}}{\Phi_{\hat{m}}}\right].$$

If u_2 is defined as a "bad" characteristic, say a history of previous failures to appear, $H_{2u_2} > 0$ represents the "pure" effect of the characteristic on flight possibility. The second term, $-(\Phi_{u_2}H_{2m}/\Phi_{\hat{m}}) < 0$, arises from the following chain of

events: the judge sets a higher bond $\hat{m}$ because of u_2; even if the defendant obtains release, the higher value of $\hat{m}$ still acts as an enhanced flight deterrent. Thus, the total effect of u_2 on flight probability is the net of a "pure" effect and an "indirect" effect involving the judge's efforts at compensation for the pure effect.[14] The total effect will be positive, negative, or zero depending on whether the judge under-, over-, or exactly compensates for the presence of u_2 in setting bond. To isolate the pure effect, one must control for $\hat{m}$ in testing the significance of the relationship between u_2 and failure to appear.[15]

H13: A higher probability of conviction and a higher maximum statutory sentence for the crime charged are associated with a higher rate of failure to appear, ceteris paribus

Reasons for assuming $H_{2i*} > 0$ were outlined in the discussion of H6. Substitution of equation (9) into equation (18) may be employed as above to distinguish between the "pure" and "total" effects of higher expected sentence on the probability of failure to appear.

Section 4 presents estimation results for the stochastic specifications of equations (6), (9), (10), and (11) and results of tests of hypotheses H1 through H13.

4. Estimation Results

To test the hypotheses stated in Section 3, empirical counterparts to equations (6), (9), (10), and (11) were specified and estimated using data on cases processed during 1974

in the Superior Court of the District of Columbia.[16] Estimation results are presented in three sections: analysis of release conditions, analysis of whether financial conditions are satisfied, and analysis of pretrial misconduct by released defendants. All three analyses made use of a common set of predetermined variables. In Exhibit A-2, these variables are defined for all three analyses.

Exhibit A-2

List of Predetermined Variables

Category	Variable Name	Definition
X_H = Current Crime Seriousness	CHG(1)-CHG(11)	CHG(K) = 1 if maximum charge falls in group K = 0 otherwise For felonies, groups are homicide, assault, sexual assault, robbery, burglary, larceny, fraud, arson/property destruction, gun offenses, other weapon offenses, drug offenses, and bail violations. For misdemeanors, gambling replaced fraud and consensual sex replaced arson/property destruction.
	NOWEAP	= 1 if weapon not used in offense 0 otherwise
	INJURY	= 1 if victim injured 0 otherwise
	THREAT	= 1 if victim intimidated 0 otherwise
	MAXSEN	= maximum statutory sentence, in years
	FELMIS	= 1 if maximum charge is a felony = 0 if maximum charge is a misdemeanor

Category	Variable Name	Definition
X_C = Current Crime Convictability	COMVIC	= 1 if victim a business or institution 0 otherwise
	RELUCT	= 1 if reluctant prosecution (exculpatory evidence, victim a poor witness, etc.) 0 otherwise
	CODEF	= 1 if one or more codefendants 0 otherwise
	RELVIC	= 1 if defendant related to victim 0 otherwise
	TANEV	= 1 if police recovered tangible evidence 0 otherwise
	1WIT	= 1 if exactly one lay witness 0 otherwise
	2WIT	= 1 if two or more lay witnesses 0 otherwise
	SUBWIN	= screening assistant prosecutor's subjective probability estimate of winning case. Possible responses were: "poor (under 50%)," "fair (50%-75%)," "good (75%-90%)," and "excellent (90%-100%)." Category mean was used as the explanatory variable.
Y_H = Criminal History	PRIOR	= 1 if defendant previously arrested 0 otherwise
	5YEARS	= 1 if defendant arrested within past 5 years 0 otherwise
	PRIALL	= number of prior arrests (all serious crimes)
	PRIPRS	= number of prior arrests (crimes against persons)
	PNDCAS	= number of pending cases at time of prosecutor screening
	ARST73	= number of closed cases against same defendant since 1/1/73

Category	Variable Name	Definition
Y_H = Criminal History	PARPRB	= 1 if defendant on parole or probation at time of arrest 0 otherwise
Y_F = Flight History	FLITES	= number of bench warrants issued against this defendant since 1/1/73
	FLTPND	= number of bench warrants issued against this defendant in pending cases
Z_S = Admissible Socioeconomic Characteristics	LOW Y	= 1 if defendant zip code is a low income area[17] = 0 otherwise
	HIGH Y	= 1 if defendant zip code is a high income area[17] = 0 otherwise
	LOCAL	= 1 if defendant recorded as a local resident 0 otherwise
	EMPLOYD	= 1 if defendant recorded as employed 0 otherwise
	DRUGS	= 1 if defendant recorded as drug user 0 otherwise
	ALCOHOL	= 1 if defendant recorded as alcoholic 0 otherwise
	6MMORE	= 1 if defendant held current or last job more than 6 months 0 otherwise
	5MLESS	= 1 if defendant held current or last job less than 6 months 0 otherwise
	NEVER	= 1 if defendant has never been employed 0 otherwise
Z_E = Extralegal Socioeconomic Characteristics	RACE	= 1 if defendant white 0 otherwise
	SEX	= 1 if defendant female 0 otherwise
	AGE	= defendant's age in years

Category	Variable Name	Definition
Z_P = Procedural Variables	J(1)-J(11)	K=1 through 10 is an index for the 10 judges who each handled more than 4% of all arraignments during 1974. For K=1 through 10: J(K)=1 if judge K set release conditions in this case 0 otherwise J(11)=1 if one of the other 35 Superior Court judges set conditions K should not be confused with PROMIS judge codes used in D.C.
	EXPER	= Years of experience for the judge on the D.C. bench
	CAPY	= ratio of average D.C. jail population during month of arraignment to the maximum population during the year
	CAPY1	= ratio of average D.C. jail population during month preceding arraignment to maximum population during the year
	DSAT	= 1 if arraignment occurred on a Saturday 0 otherwise

Having defined the set of exogenous variables to be used, we proceed to report the results of estimation.

Setting Release Conditions

To make estimation more tractable, we have viewed the setting of release conditions as a sequence of three decisions by the arraignment judge:

(a) To set financial or nonfinancial release conditions.

(b) To choose between supervision alternatives within the financial and nonfinancial categories: cash *vs.* surety financial release; and own-recognizance *vs.* third-party custodial nonfinancial release.

(c) For defendants assigned financial conditions, to set the amount of bond.

By estimating a separate equation for each of these decisions, we may test hypotheses H1 through H7 with respect to each stage in the process.

Thus, we define an endogenous variable corresponding to each stage of the decision:

(20) FIN_i = 1 if the defendant in case i is assigned financial conditions

= 0 if the defendant in case i is given nonfinancial conditions

defined for all cases in the sample;

(21a) TPC_i = 1 if the defendant in case i is released to a third-party custodian

= 0 if the defendant in case i is released on his own recognizance,

defined for all cases in which the defendant is assigned nonfinancial release conditions;

(21b) SUR_i = 1 if the defendant in case i is required to post surety bond

= 0 if the defendant in case i is required to post cash bond,

defined for all cases in which the defendant is assigned financial release conditions; and

(22) AMT_i = amount of bond required, defined for all cases in which the defendant is assigned financial release conditions.

Corresponding to each endogenous variable, we may write an equation to be estimated:

$$(23) \qquad \Pr[FIN_i=1] = 1 - \Phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}B_k}{\sigma}\right],$$

where X_k, k=0, ..., 7 denote a constant and the 7 sets of predetermined variables X_H, X_C, Y_H, Y_F, Z_S, Z_E and Z_P defined in Exhibit A-2, and $\sigma = 1$ by assumption. The B_k are corresponding vectors of coefficients to be estimated. $\Phi[\cdot]$ represents the cumulative standardized normal distribution function, and $\Pr[FIN_i=1]$ is the probability that FIN = 1 for case i.[18]

$$(24a) \qquad \Pr[TPC_i] = 1 - \Phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}B_k}{\sigma}\right].$$

$$(24b) \qquad \Pr[SUR_i] = 1 - \Phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}B_k}{\sigma}\right].$$

$$(25) \qquad AMT_i = \sum_{k=0}^{7} X_{ki}B_k + \varepsilon_i,$$

where $\varepsilon_i \sim N(0, \sigma_1^2)$ and σ_1^2 is unknown.

Equation (23) was estimated separately for felonies and misdemeanors. Estimation results are presented in Exhibit A-3, after deleting all variables whose coefficients were insignificant at conventional α-levels. The high likelihood ratio statistics indicate a good fit, and significant coefficients generally carry the signs predicted by our theoretical model.

Exhibit A-3

Estimation Results for FIN_i, the Financial/Nonfinancial Decision

	RESULTS: COEFFICIENT ESTIMATE AND (ASYMPTOTIC Z)	
VARIABLES	FELONIES	MISDEMEANORS
CHG(1)-(11): χ^2(d.f.)	75.7**(4d.f.)	78.6**(2d.f.)
HOMICIDE	0.399(3.660)**	---
ASSAULT	-0.316(-4.296)**	---
DRUGS	-0.546(-2.538)*	-0.487(-7.599)**
BAILVIOL	1.535(4.354)**	0.700(3.833)**
JUDGE(1)-(11): χ^2(d.f.)	32.3**(2d.f.)	38.0**(4d.f.)
Procedural: χ^2(d.f.)	22.5**(2d.f.)	---
EXPER	0.034(3.112)**	---
CAPY1	-1.280(-2.940)**	---
Flight Hist.: χ^2(d.f.)	83.9**(2d.f.)	84.2**(1d.f.)
FLTPND	0.710(2.173)*	---
PARPRB	0.602(8.088)**	0.696(9.508)**
Crim. Hist.: χ^2(d.f.)	73.5**(3d.f.)	70.5**(3d.f.)
PNDCAS	0.424(3.917)**	0.545(4.616)**
PRIALL	0.022(4.842)**	0.017(5.097)**
5YEARS	0.160(2.920)**	---
ARST73	---	0.107(2.967)**
Var. Convictability: χ^2(d.f.)	11.7**(2d.f.)	---
RELUCT	-0.213(-2.203)*	
SUBWIN	-0.003(-2.825)**	
Crime Ser.: χ^2(d.f.)	11.7**(1d.f.)	---
NOWEAP	-0.183(-3.497)**	
Stat. Chars.: χ^2(d.f.)	30.1**(3d.f.)	53.6**(3d.f.)
LOCAL	-0.162(-3.324)**	-0.100(-2.160)*
EMPLOYD	-0.165(-3.411)**	-0.300(-6.406)**
LOW Y	-0.125(-2.546)*	---
DRUGS	---	0.299(2.810)**
Extralegal Chars: χ^2(d.f.)	4.1*(1d.f.)	10.5**(1d.f.)
RACE	0.207(2.079)*	0.210(3.351)**
Constant	0.719(1.823)	-1.041(-22.444)**
-2LLR	451.5(χ^2_{20})**	458.4(χ^2_{14})
R^2	0.23	0.18
# Cases	3439	5027
% Predicted Correctly by Model[19]	73.0%	86.0%
% Predicted Correctly by Random Choice	57.1%	75.4%

--- Not significant at conventional α-levels
* Significant at α = .05
** Significant at α = .01

For both misdemeanors and felonies, current charge, socio-economic, criminal history, and flight history variables commonly thought to indicate a high likelihood of future serious crimes or of failure to appear are associated with non-financial release conditions. Those findings support hypotheses H2, H3 and H4.

Hypothesis H1 is supported for felonies by a strong negative relationship between previous-period jail population and the probability that financial conditions are involved.[20] The effect of arraignment judge identity is significant using a likelihood ratio test as predicted by hypothesis H5; however, only a few judges (two in felonies and four in misdemeanors) stand apart from the others. As predicted by hypothesis H7, and as one would expect under a "relative" interpretation of the constitutional prohibition against excessive bond, a low income is, ceteris paribus, associated with nonfinancial release of felony defendants.[21] The only hypothesis not supported at all by the results was H6: that judges, anticipating more failure to appear among defendants facing exceptionally long or certain sentences, would set financial conditions more frequently for such defendants. An explanation for that unexpected finding must await the investigation below of whether such defendants do in fact fail to appear more frequently than other defendants.

For defendants to be released on nonfinancial conditions, the arraignment judge must decide whether or not to appoint a third-party custodian. To learn what factors affect this

decision, equation (24a) was estimated for defendants released nonfinancially, separately for felonies and misdemeanors. The results are presented in Exhibit A-4. Again, they are generally consistent with hypotheses H1 through H7; however, a smaller set of defendant socioeconomic characteristics appear to enter into the decision. As predicted, third-party custody is assigned to higher-risk defendants, particularly with respect to criminal history variables thought to predict future crimes. This is consistent not only with theory, but with the stated purpose of a major third-party custodian "...to secure pretrial release of those persons accused of a crime but who might not qualify for other forms of release, i.e., personal recognizance or monetary bond."[22] Given the problem of nonunique equilibria discussed in Section 2 above, and the controversial nature of the third-party custodians, the extremely high likelihood ratio statistics for the judge group are not surprising.

For defendants assigned financial release conditions, the next decision is between requiring a cash bond[23] by the defendant himself and requiring posting of a surety bond. To learn what factors influence this decision, equation (24b) was estimated for defendants released financially, separately for felonies and misdemeanors. The estimation results are reported in Exhibit A-5. As one would expect given the problem of nonunique equilibria, the group of judge identity variables had a larger likelihood ratio statistic than any other variable group in this equation. Felony defendants arraigned on Saturday

Exhibit A-4

Estimation Results for TPC_i, the Third Party Custody/Personal Recognizance Decision

Variables	Results: Coefficient Estimate and (Asymptotic Z)	
	Felonies	Misdemeanors
CHARGES: χ^2 (d.f.)	57.8**(3d.f.)	23.7**(2d.f.)
ROBBERY	0.396(5.688)**	---
SEX ASLT	0.577(4.399)**	---
HOMICIDE	0.756(4.892)**	---
BAIL VIOL	---	1.132(3.936)**
BURGLARY	---	0.349(3.159)**
JUDGES: χ^2 (d.f.)	302.1**(6d.f.)	142.8**(6d.f.)
PROCEDURAL: χ^2 (d.f.)	16.6**(1d.f.)	35.4**(1d.f.)
EXPER	0.063(4.505)**	---
DSAT	---	0.535(6.248)**
CRIM. HIST: χ^2 (d.f.)	27.4**(1d.f.)	20.3**(2d.f.)
PNDCAS	0.841(4.647)**	0.380(2.115)*
ARST73	---	0.186(3.947)**
FLIGHT HIST: χ^2 (d.f.)	15.5**(1d.f.)	26.5**(1d.f.)
PARPRB	0.380(4.048)**	0.533(5.407)**
STAT. CHARS.: χ^2 (d.f.)	29.5**(1d.f.)	72.9**(1d.f.)
EMPLOYD	-0.345(-5.564)**	-0.499(-8.618)**
EXTRALEGAL CHARS.	20.4**(2d.f.)	---
AGE	-0.010(-3.568)**	---
SEX	-0.267(-2.655)**	---
Constant	-0.718(-6.215)**	-1.242(-26.473)**
-2LLR	462.8(χ^2_{15})**	395.3(χ^2_{13})**
R^2	0.33	0.27
# Cases	2,369	4,307
% Predicted Correctly		
By Model	76.4%	90.2%
By Random Choice	60.6%	82.3%

--- Not significant at conventional α-levels
* Significant at α = .05
** Significant at α = .01

Exhibit A-5

Estimation Results for SUR_i, the Surety/Cash Bond Decision

	Results: Coefficient Estimate and (Asymptotic Z)	
Variables	Felonies	Misdemeanors
CHARGE: χ^2(d.f.)	10.4*(3d.f.)	---
LARCENY	-0.292(-1.974)*	---
WEAPON	-0.491(-2.106)*	---
DRUGS	-0.946(-2.133)*	---
JUDGES: χ^2(d.f.)	72.4**(4d.f.)	70.6**(5d.f.)
PROCEDURAL: χ^2(d.f.)	12.5**(1d.f.)	5.7**(1d.f.)
DSAT	-0.562(-3.737)**	---
CAPY1	---	-2.428(-2.445)*
FLIGHT HIST: χ^2(d.f.)	6.1*(1d.f.)	---
PARPRB	0.307(2.432)*	---
CONVICTABILITY: χ^2(d.f.)	---	5.1*(1d.f.)
COMVIC	---	0.344(2.269)*
EXTRALEGAL CHARS.: χ^2(d.f.)	---	40.1**(2d.f.)
RACE	---	-0.573(-4.087)**
SEX	---	-0.662(-4.972)**
Constant	1.394(14.812)**	2.807(3.283)**
-2LLR	87.6**(χ^2_9)	114.0**(χ^2_9)
R^2	0.17	0.31
No. Observations	1070	720
% Predicted Correctly		
By Model	81.9%	69.7%
By Random Choice	69.3%	46.4%

--- Not significant at conventional α-levels
* Significant at α = .05
** Significant at α = .01

were less likely to be assigned surety bond; this result could reflect a presumption by the judge that a bondsman may be more difficult to find on a Saturday. Among misdemeanor defendants, the extralegal defendant characteristics of race and sex were significant: whites and females were significantly less likely to be released on surety bond. Except for parole/probation status, the results did not indicate that the cash/surety decision is related to defendant characteristics commonly associated with pretrial flight and recidivism.

The final step in setting financial conditions is to determine the amount of bond. To learn what factors influence this decision, equation (25) was estimated for all financial-condition defendants, separately for felonies and misdemeanors. The estimation results appear in Exhibit A-6. Treating the dependent variable in equation (25) as continuous, multiple regression analysis is an appropriate estimation technique. Test statistics computed are the conventional F for each group of explanatory variables and Student's t for individual explanatory variables.[24]

Although the estimated equations explained little of the variance in bond amount, the signs of significant coefficients were generally those predicted by theory. Among felony defendants, the charge categories of homicide and sexual assault were associated with high bonds, as were pending cases and parole or probation status at the time of

Exhibit A-6

Estimation Results for AMT_i, Bond Amount ($000)

	Results: Coefficient Estimate and (Student's t)	
Variables	Felonies	Misdemeanors
Cash/Surety: $F(\nu_1,\nu_2)$	0.18(1,1062)	10.03**(1,714)
SUR	0.257(0.422)	0.368(3.130)**
CHARGES: $F(\nu_1,\nu_2)$	80.63**(2,1062)	6.96**(1,714)
HOMICIDE	10.044(10.858)**	---
SEX ASLT	8.469(7.141)**	---
BAIL VIOL	---	0.649(2.595)**
JUDGES: $F(\nu_1,\nu_2)$	25.66**(1,1062)	28.59**(1,714)
CRIME HISTORY: $F(\nu_1,\nu_2)$	6.45*(1,1062)	---
PNDCAS	1.549(2.484)*	---
STAT. CHAR.: $F(\nu_1,\nu_2)$	7.64**(1,1062)	4.62(2,714)
EMPLOYD	-1.399(-2.809)**	---
DRUGS	---	0.506(2.314)*
ALCOHOL	---	-0.731(-2.008)*
Constant	2.802	0.911
F	31.02**(7,1062)	11.19*(5,714)
R^2	0.17	0.07
Std. Error of Estimate	7.758	1.516
N	1069	719

--- Not significant at conventional α-levels
* Significant at α = .05
** Significant at α = .01

arrest. Among misdemeanor defendants, accused Bail Reform Act violators received high bond. The high F-statistic for the judge group was not surprising; more startling was the fact that a single judge accounted for the significance. Considering defendant characteristics, employed felony defendants were found to receive lower bonds. Misdemeanor defendants were found to receive lower bonds than felony defendants, cet. par. Misdemeanor defendants with a drug history received higher bond, but those with a history of alcohol abuse received lower bond. This may reflect a judicial presumption of future crime by drug users either because of an extensive criminal history or a need to support a drug habit.

Obtaining Release

For those defendants for whom financial release conditions are set, the next event is their release or nonrelease, depending on whether or not they satisfy their conditions. To learn what factors predict whether or not a defendant obtains release, the variable OUT_i was defined, where:

(26) $OUT_i = 1$ if defendant i obtains release

0 otherwise

and the following equation was estimated using the probit technique described in note 18 above:

$$(27) \qquad Pr(OUT_i=1) = 1 - \Phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}\beta_k}{\sigma}\right].$$

The results of estimation appear in Exhibit A-7.[25] As expected, the estimation results indicate that a higher bond

Exhibit A-7

Estimation Results for
Obtaining Release on Financial Bond

Variables	Results: Coefficient Estimates and (Asymptotic Z) for OUT_i
Release Conditions: (d.f.)	102.6**(2d.f.)
SURETY	-0.691(-3.806)**
AMT($000)	-0.011(-3.943)**
Charge (d.f.)	
BAIL	-1.041(-2.388)*
ROBBERY	-0.340(-1.980)*
Interactions (d.f.)	28.7**(2d.f.)
SURETY x EMPLOYD	0.500(3.114)**
SURETY x 6MOLESS	-0.522(-2.797)**
Constant	1.136(7.174)**
-2LLR	147.5**(χ^2_6)
No. Observations	415
R^2	0.49
% Predicted Correctly	
By Model	68.0%
By Random Choice	51.6%

* Significant at $\alpha = 0.05$
** Significant at $\alpha = 0.01$

discourages release. Perhaps more interesting was the significantly negative coefficient on SURETY, indicating that defendants are more willing to post a refundable 10 percent cash bond with the court than to pay a nonrefundable 10 percent bondsman's fee. Since a defendant planning to flee successfully would be indifferent between the two alternatives, this result suggests that at the time they post bond, either defendants plan to appear in court or they fear they cannot successfully evade the bondsman.

Interestingly, no defendant characteristics were significant in themselves. This suggests that even though Exhibits A-3 through A-5 indicate that release decisions are based on certain characteristics, the effect of those decisions is nondiscriminatory. In general, each defendant was equally likely to post the cash bond required of him, even though the amounts differed across defendants. However, the significance of interaction terms between employment characteristics and the surety indicator suggests that bondsmen screen potential clients on employment, much as judges do in making their financial/nonfinancial release decisions.

Failure to Appear

For defendants who are either released immediately on nonfinancial conditions or who later obtain release by satisfying financial conditions, the factors predicting failure to appear are of interest. Specifically, we wish to know whether, as predicted by hypothesis H12, the characteristics that appear to influence release conditions actually predict failure to

appear. In addition, we wish to know whether, as predicted by hypotheses H11 and H13, released defendants respond to the flight incentive posed by a severe expected sentence and the counter-incentive presented by a high financial bond.

To examine these questions, a dependent variable $FTA1_i$ was defined, where:

(28a) $FTA1_i$ = 1 if a bench warrant was issued for defendant i during the life of his case

0 otherwise.

Issuance of a bench warrant at a scheduled judicial hearing indicates merely that the defendant failed to appear in court without giving prior notice. This may occur deliberately, or it may occur through absentmindedness, confusion, inadequate notification, or a number of other reasons. If the missing defendant is reapprehended and the arresting officer finds evidence that notice was received, he is required to charge the defendant with violation of the D.C. Bail Reform Act (BRA). In order to analyze the subset of failures to appear arising from willful actions by the defendant, an alternative dependent variable, $FTA2_i$, was defined, where:

(28b) $FTA2_i$ = 1 if a bench warrant was issued for defendant i and one of the following occurred in addition: (a) the defendant was arrested for BRA violation before disposition of his sample case (b) the case was still open when the data base was constructed in August 1975.

An equation of the following form was estimated for each version of the dependent variable, using the probit technique described in note 18 above:

$$(29) \qquad \Pr(FTA_i=1) = 1 - \phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}\beta_k}{\sigma}\right].$$

The estimation results appear in Exhibit A-8. Regardless of how failure to appear is defined, defendants in the custody of third parties are more likely to fail; while employed defendants and those charged with assault are less likely to fail. Several other variables describing the defendant, the charge, and the release conditions seem to explain failure to appear in general, but not our proxy for willful failure. No deterrence effect of bond, or encouragement effect of high expected sentence, was apparent under either definition. These results imply that laws requiring judges to assess flight probability and set conditions to prevent flight may be assuming a predictability and rationality of failure to appear that do not exist.

Pretrial Rearrest

The other form of pretrial misconduct is the commission of additional crimes while released and awaiting trial. While we cannot observe pretrial criminality accurately, we can observe pretrial rearrests and the dispositions of those arrests. To investigate what factors appear to predict pretrial criminality, two alternative indicators were defined:

(30a) $ARREST1_i$ = 1 if the defendant was rearrested before disposition of the sample case i

0 otherwise.

It is impossible to tell whether variables predicting ARREST1

Exhibit A-8

Estimation Results for FTA_i, Failure to Appear

Variables	Results: Coefficient Estimates and (Asymptotic Z)	
	All Failures	Willful Failures
Release Conditions: (d.f.)	16.1**(3d.f.)	12.7**(3d.f.)
AMT	0.008(0.202)	-0.022(-0.357)
CASH	0.375(2.205)*	0.150(0.661)
TPC	0.197(3.631)**	0.237(3.660)**
Charge: (d.f.)	27.7**(3d.f.)	12.5**(3d.f.)
ASLT	-0.248(-3.743)**	-0.227(-2.707)**
SEXASLT	-0.640(-2.990)**	-0.409(-1.716)
WEAPONS	-0.218(-2.575)**	-0.192(-1.801)
Statutory Chars: (d.f.)	41.9**(2d.f.)	13.0**(2d.f.)
EMPLOYD	-0.253(-5.964)**	-0.193(-3.659)**
DRUGS	0.231(2.548)*	0.021(0.174)
Constant	-1.168(-36.582)**	-1.569(-39.632)**
-2LLR	104.1** (χ^2_8)	45.4** (χ^2_8)
R^2	0.05	0.03
# Observations	6913	6913
% Predicted Correctly		
By Model	90.3%	95.2%
By Random Choice	82.5%	90.9%

* Significant at $\alpha = .05$
** Significant at $\alpha = .01$

describe systematic defendant behavior, or, alternatively, police behavior in selecting released defendants as prime suspects. To attempt to separate the two relationships, the second indicator was defined by:

(30b) $AREST2_i$ = 1 if the defendant was rearrested before disposition of current case i and convicted in the second case

0 otherwise.

For each of these variables, an equation of the form

$$(31) \qquad \Pr(AREST_i=1) = 1 - \Phi\left[\frac{0 - \sum_{k=0}^{7} X_{ki}\beta_k}{\sigma}\right].$$

The estimation results under both definitions are presented in Exhibit A-9. These results indicate that felony defendants, particularly those charged with burglary and larceny, are more likely than others to commit additional crimes while on release, using either measure of criminality. Prior criminal history, particularly recent arrests, also seems to predict future criminality; in contrast, employed defendants and older defendants are less likely to commit additional crimes while on release. Interestingly, third-party release, a history of drug use, and a nonwhite defendant all seem to increase the probability of rearrest, though the effect on rearrest followed by conviction is insignificant. In general, coefficients in the two equations are of the same sign, though of somewhat less significance in the second equation. This comparison seems to reflect randomness in the adjudication outcome; if police were systematically making unwarranted arrests of defendants on conditional release, one would expect greater inconsistencies between the two equations.

Exhibit A-9

Estimation Results for ARREST1, Pretrial Rearrest, and for ARREST2, Pretrial Rearrest Followed by Conviction

Variables	Results: Coefficient Estimates and (Asymptotic Z)	
	Rearrest Only	Rearrest and Conviction
Release Conditions: χ^2(d.f.)	8.7*(2d.f.)	0.5(1d.f.)
AMT	0.067(1.821)	0.035(0.737)
TPC	0.160(2.662)**	---
Charge: χ^2(d.f.)	16.2**(4d.f.)	15.2**(2d.f.)
ROBBERY	0.207(2.573)*	---
BURGLARY	0.256(3.260)**	0.260(3.034)**
LARCENY	0.153(2.350)*	0.226(3.224)**
ARSON/PROPDEST	0.221(2.386)*	---
Curr. Crime: χ^2(d.f.)	21.5**(2d.f.)	11.9**(1d.f.)
NOWEAP	0.144(2.306)*	---
FELMIS	0.256(4.501)**	0.216(3.555)**
Crim. Hist: χ^2(d.f.)	48.5**(3d.f.)	39.1**(2d.f.)
PRIPRS	0.010(3.510)**	---
PNDCAS	0.296(2.672)**	0.277(2.157)*
ARST73	0.186(5.191)**	0.235(5.973)**
Statutory Chars: (d.f.)	23.7**(2d.f.)	16.4**(1d.f.)
EMPLOYD	-0.177(-3.641)**	-0.247(-4.114)**
DRUGS	0.317(3.340)**	---
Extralegal Chars: χ^2(d.f.)	11.7**(2d.f.)	6.4*(1d.f.)
RACE	-0.199(-2.290)*	---
AGE	-0.005(-2.460)*	-0.007(-2.512)*
Constant	-1.669(-17.689)**	-1.747(-19.079)**
-2LLR	220.2**(χ^2_{15})	113.2**(χ^2_8)
No. Observations	6913	6913
R^2	0.10	0.07
% Predicted Correctly		
By Model	93.0%	96.4%
By Random Choice	87.2%	93.1%

--- Not significant at conventional α-levels
* Significant at $\alpha = .05$
** Significant at $\alpha = .01$

5. Implications of Results

By comparing variables found to predict bond amount with variables found to predict failure to appear and pretrial rearrest, Landes was able to infer that Manhattan judges were setting bond to minimize crime rather than nonappearance. It was of interest to replicate this comparison in the District of Columbia; however, since nonfinancial release is the most common condition in the District, the financial/nonfinancial decision seemed a better indicator of judge behavior than bond amount.

Exhibit A-10 summarizes estimation results from Exhibits A-3, A-8, and A-9 to address this question. It displays the asymptotic Z for each attribute of the defendant or his alleged crime that demonstrated a statistically significant relationship to the imposition of bond, failure to appear, or pretrial rearrest.

Goodness-of-fit measures, such as R^2 and the likelihood ratio test statistic, in Exhibit A-10 indicate that the judges' decisions are more systematic with respect to our included variables than are nonappearances, which in turn are more regular than pretrial rearrests. More striking, however, is the lack of correspondence among the sets of variables that predict imposition of bond, failure to appear, and pretrial rearrest. Only employment status had a consistent effect in all three equations: employed defendants were less likely to be held on bond, to fail to appear, and to be rearrested before trial if released. Of particular interest was the effect of a

Exhibit A-10

Comparison of Significant Variables in Probit Analyses of Bond Imposition, Nonappearance, and Pretrial Crime

Explanatory Variable	Significant Values of Asymptotic Z		
	Bond Imposition (Felonies)--Ex A-3	Failure to Appear--Ex A-8	Pretrial Rearrest--Ex A-9
Current Charge			
HOMICIDE	3.660**	---	---
ASSAULT	-4.296**	-3.743**	---
DRUG VIOL	-2.538*	---	---
BAIL VIOL	4.354**	---	---
SEX ASLT	---	-2.990**	---
WEAPON VIOL	---	-2.575**	---
ROBBERY	---	---	2.573*
BURGLARY	---	---	3.260**
LARCENY	---	---	2.350*
ARSON/PROPERTY	---	---	2.386
Crime Severity			
NOWEAP	-3.497**	---	2.306*
Defendant History			
FLTPND	2.173*	---	---
PARPRB	8.088**	---	---
PNDCAS	3.917**	---	2.672**
PRIALL	4.842**	---	---
PRIPRS	---	---	3.510**
5YEARS	2.920**	---	---
ARST73	---	---	5.191**
Defendant Descriptors			
LOCAL	-3.324**	---	---
EMPLOYD	-3.411**	-5.964**	-3.641**
LOW Y	-2.546*	---	---
DRUGS	---	2.548*	3.340**
RACE	2.079*	---	-2.290*
AGE	---	---	-2.460*
	-2LLR=451.5**	-2LLR=104.1**	-2LLR=220.2
	R^2 = 0.23	R^2 = 0.05	R^2 = 0.10
	N = 3439	N = 6913	N = 6913

--- Significant at conventional α-levels
* Significant at α = .05
** Significant at α = .01

local residence. As in many bail reform cities, a local residence is used in the District of Columbia as an indicator of community ties, which decreases the probability that bond will be required of a defendant. Yet we find no indication that local residents in fact have better appearance or arrest records than nonlocals. Other inconsistencies appear with regard to race, drug use, parole or probation status when arrested, use of a weapon during the alleged offense, and certain charge categories. Based on this comparison, it is not apparent that the pretrial release system in the District of Columbia attempts to minimize either failure to appear or pretrial crime, net of community gains; the goals of the system are unclear.

Given the behavioral inconsistencies of the District's pretrial release system, it is reasonable to ask to what extent the system succeeds in releasing low-risk defendants and detaining high-risk ones. To answer this question, the estimation results reported in Exhibits A-8 and A-9 were used to estimate the probabilities of failure to appear and pretrial rearrest for each defendant in the sample. The probability distributions for defendants released nonfinancially and defendants held on bond are compared in Exhibit A-11. As reported in the exhibit, for each type of misconduct, both the mean and median predicted probabilities are higher for the financial group than for the nonfinancial group. However, the misconduct probability ranges for the two groups overlap to a large extent. Thus, it is fair to say that defendants

Exhibit A-11

Comparison of Misconduct Probability Estimates for Defendants on Financial and Nonfinancial Release

Type of Misconduct	Estimated Misconduct Probability	
	Defendants on Nonfinancial Release (N = 6676)	Defendants on Financial Release (N = 1790)
Failure to Appear	Min. Prob. = 0.02 Max. Prob. = 0.20 Mean Prob. = 0.10 Median Prob. = 0.08	Min. Prob. = 0.02 Max. Prob. = 0.20 Mean Prob. = 0.11 Median Prob. = 0.13
Willful Failure to Appear	Min. Prob. = 0.02 Max. Prob. = 0.07 Mean Prob. = 0.05 Median Prob. = 0.04	Min. Prob. = 0.02 Max. Prob. = 0.07 Mean Prob. = 0.06 Median Prob. = 0.07
Rearrest	Min. Prob. = 0.01 Max. Prob. = 0.58 Mean Prob. = 0.07 Median Prob. = 0.05	Min. Prob. = 0.01 Max. Prob. = 0.67 Mean Prob. = 0.10 Median Prob. = 0.08
Rearrest and Conviction	Min. Prob. = 0.00 Max. Prob. = 0.50 Mean Prob. = 0.04 Median Prob. = 0.03	Min. Prob. = 0.00 Max. Prob. = 0.46 Mean Prob. = 0.05 Median Prob. = 0.04

held on bond are on average higher risks than those released without bond; yet the overlapping ranges indicate that the system does not selectively release the lowest risk defendants and hold the highest risk defendants.

A similar conclusion may be drawn from Exhibit A-12, with respect to defendants who eventually obtain release on financial conditions. Based on the 424 defendants whose eventual detention status was recorded, one can conclude that the 170 defendants who did not make bond were slightly poorer risks than the 254 who did, on average. Yet the overlapping ranges indicate

Exhibit A-12

Comparison of Misconduct Probability Estimates for Defendants Held on Bond, Whether or Not Release Was Obtained

Type of Misconduct	Estimated Misconduct Probability	
	Defendants Obtaining Release (N = 254)	Defendants Not Obtaining Release (N = 170)
Failure to Appear	Min. Prob. = .02 Max. Prob. = .20 Mean Prob. = .10 Median Prob. = .09	Min. Prob. = .02 Max. Prob. = .20 Mean Prob. = .11 Median Prob. = .13
Willful Failure to Appear	Min. Prob. = .02 Max. Prob. = .07 Mean Prob. = .05 Median Prob. = .04	Min. Prob. = .02 Max. Prob. = .07 Mean Prob. = .06 Median Prob. = .07
Rearrest	Min. Prob. = .01 Max. Prob. = .48 Mean Prob. = .09 Median Prob. = .07	Min. Prob. = .03 Max. Prob. = .49 Mean Prob. = .12 Median Prob. = .10
Rearrest and Conviction	Min. Prob. = .00 Max. Prob. = .32 Mean Prob. = .05 Median Prob. = .03	Min. Prob. = .01 Max. Prob. = .43 Mean Prob. = .06 Median Prob. = .05

that exceptions occurred: some who obtained release were much poorer risks than others who did not.

Presumably, at any given bond amount those who obtained release had more to gain than those who did not. It was of interest to compare the cost of this pretrial detention system with a system in which the risk of pretrial misconduct, rather than willingness to pay, determines which defendants are released. This comparison was made in Exhibit IV-3 in Chapter IV with respect to pretrial rearrest and in Exhibit II-4 with respect

to nonappearance. The exhibits were constructed in the following manner.

Separately with respect to each type of misconduct, the 424 defendants were ranked in ascending order of predicted misconduct probability. Then, assuming that the lowest risk defendants are released first, the next lowest next, and so forth, the efficiency frontier in each graph was traced out. Each frontier represents the minimum number of defendants who must be detained (and the corresponding detention cost) to achieve any given level of pretrial misconduct. The frequency distributions of estimated misconduct probabilities for the 254 defendants who actually obtained release were used to locate points A and B, which represent the actual combinations of number detained and expected misconduct achieved by the system.

Points A' and B' denote the minimum detention requirements to achieve the same respective levels of expected misconduct. Points A" and B" indicate the levels of expected misconduct that could have been achieved by detaining the 170 highest risk defendants. Thus, points within the areas AA'A" and BB'B" would have been clearly preferable to the actual outcome, for both misconduct control and due process advocates.

The cost of inefficient pretrial release may be estimated as follows. If, as specified by law, defendants were detained to minimize failure to appear, Exhibit IV-3 shows that the number detained could have been reduced from 170 to 141 with no increase in the expected number of nonappearances. Based on estimates from PROMIS data that mean delay from arrest to trial

is approximately 90 days, and the D.C. Department of Corrections estimates that the average variable cost of detention is approximately $28.30 per inmate-day, each of the 29 unnecessary detentions cost the community $2,547. Since the group of 424 represents a sampling fraction of 0.24 of all defendants for whom financial conditions were set, the annual cost of system inefficiency is an estimated $307,762, if the system objective is assumed to be prevention of nonappearance. By similar reasoning, Exhibit II-4 shows that the number detained could have been reduced from 170 to 98 with no increase in the expected number of pretrial rearrests. Thus, with the objective of preventing pretrial crime, systemwide annual savings of $764,100 could be achieved without increasing the expected number of rearrests.

Footnotes

[1]William M. Landes, "The Bail System: An Economic Approach," 2 Journal of Legal Studies, 1973, pp. 79-105.

[2]William M. Landes, "Legality and Reality: Some Evidence on Criminal Procedure," 3 Journal of Legal Studies, 1974, pp. 287-337.

[3]The analysis in this appendix makes use of 1974 data from the Prosecutor's Management Information System (PROMIS), which operates in the office of the U.S. Attorney, the public prosecutor for the District of Columbia.

[4]See note 1.

[5]The Landes model includes two additional arguments in several functions: t, the time between arrest and trial; and p, the probability of reapprehension for a defendant who fails to appear. Because the processes that determine them are beyond the scope of this paper, we do not intend to test hypotheses involving them. Therefore, they are dropped from the model for convenience. An analysis of t appears in PROMIS Research Report No. 15, An Analysis of Case Processing Time in the District of Columbia Superior Court.

[6]While c* did not appear in the Landes model, severe and highly publicized overcrowding in the D.C. Jail made it pertinent to our analysis. In fact, shortly after our 1974 sample period, the D.C. Jail population size was limited by court order, which caused detainees to be housed in facilities some 30 miles away until the population was reduced.

[7]Our discussion of cost differs from that of Landes in several respects. First, because of the controversy over proper uses of bail, we have disaggregated his harm function H into H_1 (harm from future crimes) and H_2 (harm from failure to appear). Second, since according to note 5, we do not include p and t in the model, Landes's C (cost of reapprehension and shortening pretrial delay) is excluded from the net benefit, and reapprehension cost is subsumed in our H_2. Third, we take explicit note of the fact that at the time conditions are set, H_1 and H_2 are unknown to the judge. Since the judge must form expectations about them based on prior experience with similar defendants, the judge's identity itself becomes an argument of H_1^* and H_2^*. Fourth, in constructing the function H_2^*, we assume that the judge expects a financial bond to act as a deterrent to flight. Since bond is not forfeited upon rearrest, bond does not appear directly in the function H_1^*. Similarly, since the obligation

of bondsmen and third-party custodians is to make sure that the defendant appears for trial, s appears in the function H_1^*, but not H_2^*.

[8]Note that m denotes payment by the defendant. In our surety bond case, m corresponds to fM in Landes's appendix on the bondsman, namely the fee to the bondsman, which is generally 10 percent of the amount for which the bondsman is liable.

[9]An exception is the case of a judge who is concerned only with preventing future crime, in effect discounting H_{2b} to zero. In this case only the defendant's gain function would shift, and fewer defendants would be released under surety bond.

[10]Economists may be troubled by the discussion of "crime seriousness" as a continuous variable. However, based on work in the psycho-physical scaling of stimuli, criminologists have developed indices of crime seriousness (see T. Sellin and M. Wolfgang, The Measurement of Delinquency, New York: Wiley & Sons, 1964), which have been used to set priorities in prosecutors' offices (see J. Roth, "Prosecutor Perceptions of Crime Seriousness," forthcoming, Journal of Criminal Law and Criminology, May 1978). The troubled reader may substitute "disutility" for "seriousness" without affecting the argument.

[11]B. Forst and K. Brosi, "A Theoretical and Empirical Analysis of the Prosecutor," 6 Journal of Legal Studies, 1977, p. 189.

[12]Although we know of no rigorous empirical studies of the question, the convicted Watergate defendants-turned-authors seem to prove that for high income defendants, incarceration (pretrial or otherwise) does not always lead to decreased future earnings.

[13]Such an assumption seems plausible for defendants in the age bracket 18-30, who form the bulk of our sample.

[14]We are omitting here a similar compensation effect through the setting of s, and a prior compensation effect in which fewer defendants possessing "bad" characteristic u_2 obtained release because of the higher $\hat{m}$. These omissions do not invalidate the argument that the effect of u_2 cannot be evaluated without controlling for $\hat{m}$.

[15]Thus, equations (11.1) and (11.3) in Landes ("Legality and Reality," p. 323) are tests of the "pure" effect of the serious characteristics on failure to appear; while equation (11.2), which does not include bond amount is a test of the total effect. The fact that introducing bond amount did not substantially affect the estimated coefficients of the characteristics is additional evidence in support of Landes's conclusion that in New York City bond is set to deter pretrial crime rather than pretrial flight.

[16]Most of the data used were captured by PROMIS (the Prosecutor's Management Information System), which operates in the U.S. Attorney's Office. The offenses charged are roughly equivalent to felonies and major misdemeanors as defined by state statutes elsewhere. In 1974, 17,534 defendant-cases were presented for prosecution and recorded in PROMIS. From the 17,534 records available, the following categories of records were excluded from this analysis: records of cases rejected (no-papered) by the prosecutor at initial screening; records of each defendant's second and subsequent cases during 1974, to avoid accounting problems caused by the disappearance of a defendant with two or more cases pending; records of cases for which the case number changed before final disposition, thereby eliminating from the record failures to appear occurring after the number changed; and records for which consistency checks indicated errors in recording initial release conditions. After these exclusions, 3,439 felony records and 5,027 misdemeanor records remained.

[17]Low-income area zip codes were 20018, 20019, 20020, 20032 and 20001. High-income area zip codes were 20034, 20014, 20015, 20016, 20008 and 20007. Given the large size of zip code areas and the fact that high- and middle-income defendants may live in poor neighborhoods, these proxies are no doubt subject to substantial measurement error. About 35 percent of defendants were classified as low income, about 2 percent as high income.

[18]This formulation assumes that the true probability that $FIN_i = 1$ is a continuous normally distributed random variable $\Phi(I_i)$, where $I_i = \sum_{k=0}^{7} X_{ki}\beta_k + u_i$, and $u_i \sim N(0, \sigma^2)$, but that we can observe FIN_i only at the values 0 (nonfinancial conditions set) or 1 (financial conditions set). This model is a special case of one formulated by R.D. McKelvey and W. Zavoina, "A Statistical Model for the Analysis of Ordinal Level Dependent Variables," 4 Journal of Mathematical Sociology, 1975, pp. 103-120; a maximum likelihood estimation technique developed by those authors was employed here. In large samples, under the null hypothesis that $B_k = 0$, the quotient of each estimated coefficient divided by its standard error is distributed as standard normal; hence a z-test analogous to the usual t-test in regression analysis is available. Explanatory power of a set of variables $Z_1, \ldots, Z_K$ may be tested with a likelihood ration (LR) test, using the large-sample property that $-2 \ln(LR)$ is distributed as χ^2 with K degrees of freedom.

[19]The dependent variable value to which the estimated model assigns the highest probability for the i^{th} observation is called the i^{th} "prediction." If that value equals the actual value of the dependent variable, the "prediction" is counted as correct by the computer program used here. Since the data being "predicted" are also used in estimation, we are not predicting in the usual sense; in general, the reported statistic overstates the predictive accuracy one would expect on a different data set, for example the 1975 PROMIS data. Nevertheless, the reported "% Predicted Correctly by Model" seems a reasonable criterion for choosing among alternative models estimated with the same data. Furthermore, the improvement over "% Predicted Correctly by Random Choice" is a heuristic measure of the extent to which the model has identified systematic relationships. From the bivariate case encountered here, the latter statistic is computed as $1-2f(1-f)$, where f is the observed proportion of the sample having the defendant variable equal to one.

[20]In the misdemeanor equation, the CAPY1 coefficient was negative, as predicted, but insignificant. Judges may consider jail capacity constraints less important in misdemeanor cases because they are disposed of more quickly.

[21]In a version of the misdemeanor model, which excluded employment status, the low-income proxy coefficient was significantly negative. Perhaps high intercorrelation is making the independent effect of income on pretrial release conditions.

[22]Bonabond, Inc., "Community Benefits: 1974," Washington, D.C., 1974, p. 3.

[23]The judge may require posting of the entire cash bond or only a percentage of it. Unfortunately, the percentage required is not recorded in PROMIS. However, of 132 defendants in our sample released on financial conditions, only 14 had conditions other than the 10 percent deposit.

[24]See, for example, J. Kmenta, Elements of Econometrics, New York: The Macmillan Co., 1971, pp. 366-370.

[25]PROMIS does not record whether defendants required to post cash or surety bond actually obtain release or not. To obtain this information, a 25 percent random sample of financial-release defendants was selected; their court records were examined to learn whether or not they obtained release. Equation (27) was estimated using the 415 records of defendants who were in the random sample and the group defined in note 16.

[26]Previous INSLAW research (F.J. Cannavale and W.D. Falcon, Witness Cooperation, Lexington, Mass: Lexington Books, 1976, pp. 87-100) has documented a number of reasons why cases are dropped because of "uncooperative witnesses." A major reason was that erroneous address records prevented the witness from receiving his subpoena. It is not unreasonable to suspect that similar communication problems may exist with respect to defendants.

END