THE LAZAR INSTITUTE
Washington, D.C.

CRIME DURING THE PRETRIAL PERIOD: A SPECIAL SUBSET OF THE CAREER CRIMINAL PROBLEM

CRIME DURING THE PRETRIAL PERIOD: A SPECIAL SUBSET OF THE CAREER CRIMINAL PROBLEM

by

Mary A. Toborg
The Lazar Institute

and

Brian Forst
Institute for Law and Social Research (INSLAW)

Prepared for Career Criminal Workshop, sponsored by National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, September 20 and 21, 1979

CRIME DURING THE PRETRIAL PERIOD:
A SPECIAL SUBSET OF THE
CAREER CRIMINAL PROBLEM

Background

Recently, there has been increasing national concern about pretrial release practices and their influence on subsequent crimes committed by defendants awaiting trial. In February of this year, former Attorney General Griffin Bell stated that the criminal justice system releases too many people who endanger the public and suggested that repeat offenders should be kept off the street. A similar sentiment was expressed that same month by Chief Justice Warren Burger, who indicated that a defendant's possible threat to the community could no longer be overlooked in setting bail, as is mandated by most national and state legislation.[1]

More recently, Senators Edward Kennedy and Birch Bayh have expressed concerns about pretrial release mechanisms. In a June speech on this topic, Senator Kennedy said that the current practices are "not working.... They fail to deal with the problem of crimes committed by defendants released on bail...(and) they pose an unnecessary threat to the safety of the community."[2] In a similar vein, Senator Bayh commented, "It should be evident to all of us that we are not enhancing the civil liberties of the 99 percent of our law-abiding citizens by allowing them to be preyed upon by career criminals who are out on bail."[3]

Similar concerns about release practices are shared by the general public. For example, in a 1978 public opinion survey, 37 percent of the respondents expressed a belief that it was a "serious problem which occurs often" for courts to grant bail to those previously convicted of a serious crime. This level of distress was reflected also in analyses of major population subgroups, by ethnicity, income, and self-described classifications of "liberal," "moderate," and "conservative." (The range by subgroup was from 33 percent to 42 percent of the respondents who considered the problem a serious one, occurring often.)[4]

Despite widespread concern about release practices and pretrial criminality, most of the laws governing release decisions have not permitted consideration of the possible "dangerousness" of the defendant. Historically, the legal basis of release decisions has been whether the defendant will appear for court, and conditions of release (bail, supervision, etc.) have been constrained to be the least restrictive ones preventing flight. Thus, a defendant who poses a poor risk of appearing for trial can have a variety of conditions imposed to increase the likelihood of appearing, but a defendant who poses a poor risk of being crime-free during the pretrial period cannot legally be subject to similar limitations designed to reduce the probability of crime.

This situation has been questioned by many persons, and a change which is often suggested is the legalization of "preventive detention." Such a policy, which exists in the District of Columbia, would permit detention of dangerous defendants. Opponents of preventive detention, however, note the

difficulties of predicting dangerousness and stress the fact that preventive detention may violate certain Constitutional principles regarding the treatment of defendants who have been accused of crimes, but not found guilty of them.

It is noteworthy that the legal interpretation surrounding one of these Constitutional principles--presumption of innocence--appears to be changing. In the 1951 case of Stack v. Boyle, the Supreme Court stated: "Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." However, in a class action case decided this year (Bell v. Wolfish), the Court indicated that the presumption of innocence is important during a trial but "has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun." While the impact of this ruling may depend largely on its application to subsequent cases, it would appear that preventive detention--or other matters relating to pretrial release or confinement--would not currently be viewed as violating the presumption of innocence.[5]

Although preventive detention to avert anticipated pretrial crime is not expressly legitimate for most defendants in most jurisdictions, there is some evidence that the bond system may function as a sub rosa form of preventive detention. The legal concept underlying the money bond system is that financial incentives are needed to assure the appearance in court of certain defendants. In practice, however, it appears that many judges set bonds that they think are beyond a defendant's means, if they consider the defendant "dangerous." For example, an analysis of indigent defendants arrested in New York City in 1971 found four variables that were significant predictors of bail amount:

- severity of charge facing the defendant;
- prior felony and misdemeanor records;
- whether the defendant was facing another charge; and
- whether the defendant was employed at the time of arrest.

None of these variables was significantly associated with the probability of failure to appear in court, but all except the last were associated with the probability of being arrested on a new charge while awaiting trial. The study concluded that bail was not being used to ensure appearance at the trial, but rather to detain defendants considered likely to be rearrested before trial.[6]

Although the setting of bail may be used as an attempt to achieve sub rosa preventive detention, the attempt may fail: if the bond amount can be raised, the defendant will be released. Thus, the bond system has been criticized as an ineffective means of protecting the community by those who believe that community protection considerations should influence release decisions, not just considerations relating to the possible flight of the defendant.[7]

To assess the most appropriate means of dealing with issues concerning pretrial criminality requires analysis of the nature of such criminality and the extent to which it might accurately be predicted at the time release decisions are made. This paper considers these topics, based primarily on two studies: the national evaluation of pretrial release, now being conducted by The Lazar Institute, and an analysis of pretrial release and misconduct in the District of Columbia, a project recently completed by the Institute for Law and Social Research (INSLAW).[8]

The following sections of this paper present:

- preliminary findings from the Lazar evaluation, primarily describing the extent and type of pretrial criminality occurring in eight jurisdictions studied in detail;
- results of INSLAW's analysis of Washington, D.C., primarily focusing on the study's attempts to predict pretrial criminality; and
- a discussion of possible remedies that have been suggested for reducing pretrial criminality.

National Evaluation of Pretrial Release (Lazar Study)

The national evaluation of pretrial release, funded by LEAA's National Institute of Law Enforcement and Criminal Justice, has several major components: a cross-sectional analysis of release decisions and outcomes in eight jurisdictions that have pretrial release programs, an experimental assessment of program impact in four sites, and an analysis of two communities without programs. The preliminary findings presented in this paper are based on the cross-sectional analysis of eight jurisdictions: Baltimore City, Maryland; Baltimore County, Maryland; Washington, D.C.; Dade County (Miami), Florida; Louisville, Kentucky; Pima County (Tucson), Arizona; Santa Cruz County, California; and Santa Clara County (San Jose), California.

In each site a random sample of defendants was selected for study and tracked through existing records from point of arrest until final case disposition. Where possible, the sample was selected over a twelve-month period during 1976-77 and included both felony and misdemeanor defendants. The combined sample for the eight sites is approximately 3,500 defendants, out of a universe of more than 140,000 defendants. The pretrial criminality analysis that follows is based only on released defendants, who comprise 85 percent (approximately 3,000 defendants) of the sample.

In the eight sites, 16 percent of the released defendants (476 out of 2,956) were rearrested while awaiting trial on the original charge, with the rates for individual jurisdictions ranging from 7.5 percent to 22.2 percent. Moreover, many defendants were arrested repeatedly while awaiting trial; approximately 30 percent of all rearrested defendants were rearrested more than once.

Assessment of the seriousness of this pretrial criminality requires consideration of the types of charges for which defendants were rearrested.[9]

Table 1, based on the classifications used in the FBI's Uniform Crime Reports, shows that 38 percent of all rearrests were for Part I offenses (criminal homicide, forcible rape, robbery, aggravated assault, burglary and theft), and 62 percent for Part II crimes.

Although the FBI's crime categorization assesses overall crime severity, it provides little insight about specific crime groupings of interest. For example, both Part I and II offenses include crimes against both persons and property. To analyze these types of crimes, the following offense categorization was used:

- crimes against persons (murder, nonnegligent manslaughter, forcible rape, robbery, aggravated assault, other assaults, arson);
- economic crimes (burglary, larceny, theft, forgery, fraud, embezzlement, stolen property);
- drug crimes (distribution or possession of narcotics or marijuana);
- crimes against public morality (prostitution, sex offenses other than forcible rape or prostitution, gambling, liquor law violations, drunkenness);
- crimes against public order (weapons, driving while intoxicated, disorderly conduct, vagrancy, minor local offenses); and
- other crimes.

On this basis, as shown in Table 1, the most common rearrest category is economic crime (31 percent), followed by crimes against persons and public order (20 percent each).

A comparison of rearrest charges with the charges for the original arrest (see Table 1) shows that rearrests are for somewhat less serious charges. Forty-three percent of the rearrests involved defendants who had been charged originally with a Part I offense, while 38 percent of the rearrests themselves were for Part I offenses. In terms of the six-category crime classification, the major difference between original and rearrest charges is the smaller percentage of defendants rearrested for economic crimes (31 percent of the rearrest charges, as compared with 41 percent of the original charges for rearrested defendants).

Table 2 provides additional insight about the patterns of original versus rearrest charges. Eighty-seven of the rearrests involved defendants who had been charged originally with crimes against persons, but only 26 of those rearrests (30 percent) were for crimes against persons. For economic crimes, drug crimes and crimes against public morality, more than half the rearrests of defendants originally charged with one of these crimes were for crimes in the same category (51 percent for economic crimes, 56 percent for drug crimes, and 63 percent for crimes against public morality). The

TABLE 1

REARREST AND ORIGINAL CHARGES, BY TYPE OF OFFENSE

Type of Offense	Rearrest Charge		Original Charge	
	Number	Percent	Number	Percent
Part I	182	38%	205	43%
Part II	294	62%	271	57%
TOTAL	476	100%	476	100%
$X^2 = 2.3$ p=.14				
Crimes against Persons	96	20%	87	18%
Economic Crimes	147	31%	194	41%
Drug Crimes	51	11%	36	8%
Crimes against Public Morality	50	11%	48	10%
Crimes against Public Order	94	20%	89	19%
Other Crimes	38	8%	22	5%
TOTAL	476	100%	476	100%
$X^2 = 14.0$ p=.02				

TABLE 2

TYPE OF REARREST CHARGE VERSUS TYPE OF ORIGINAL CHARGE

Pretrial Arrest Category / Original Charge Category	Crimes Against Persons		Economic Crimes		Drug Crimes		Crimes Against Public Morality		Crimes Against Public Order		Other Crimes		TOTAL	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Crimes Against Persons	26	30%	19	21%	10	11%	4	5%	22	25%	6	7%	87	100%
Economic Crimes	43	22%	98	51%	13	7%	4	2%	19	10%	16	8%	194	100%
Drug Crimes	2	7%	4	12%	20	56%	2	5%	7	20%	1	1%	36	100%
Crimes Against Public Morality	3	7%	4	9%	1	3%	30	63%	4	9%	5	11%	46	100%
Crimes Against Public Order	15	17%	14	16%	6	6%	7	8%	39	44%	8	9%	89	100%
Other Crimes	6	29%	8	36%	1	6%	2	10%	3	13%	2	8%	22	100%
TOTAL	96	20%	147	31%	51	11%	50	11%	94	20%	38	8%	476	100%

χ^2 (McNemar's)=28.5 df=15 p=.05

corresponding percentage for crimes against public order is 44 percent and for other crimes is 8 percent. Hence, for the defendants rearrested, the original charge is related to the subsequent charge for economic, drug, public morality and public order crimes much more than is the case for crimes against persons, the category of greatest concern to much of the public.

Table 3 shows the reactions of the court to pretrial arrests. The most common reaction was to set or increase bail, followed by no action. Only at the third pretrial arrest were there substantial increases in the extent of detention ordered and decreases in the extent to which no court action occurred.

Besides assessing the extent and type of crime committed by released defendants and the court's reactions to the rearrests, it is important to consider whether the characteristics of rearrested defendants differ significantly from those of defendants not rearrested. If such differences exist, it may be possible to identify "high-risk" defendants at the time of release and take various actions designed to lower this risk. Several major differences are discussed below, because of their possible importance to career criminal programs.

Table 4 shows that defendants rearrested during the pretrial period were originally charged with more serious crimes than defendants not rearrested: 42 percent of the rearrested group was originally charged with a Part I crime, as compared with 27 percent for other defendants. In addition, rearrested defendants had a much higher incidence of economic crimes (40 percent versus 23 percent) as their original charges and a much lower proportion of crimes against public order (19 percent versus 33 percent).

Rearrested defendants were also much more likely to have been involved with the criminal justice system at the time of the original arrest, as shown in Table 5. Thirty-six percent of the rearrested defendants were involved with the criminal justice system, as compared with 18 percent of the other defendants. Rearrested defendants also had more extensive prior records than other defendants. They averaged 5 prior arrests and 2.5 prior convictions, as compared with 3 and 1.2, respectively, for other defendants. They were also younger at the time of arrest (27 years on the average, as compared with 30 years for defendants not rearrested), and had been younger at the time of their first adult arrest (22 years on the average, as compared with 24 years for defendants not rearrested).

Other characteristics also distinguish the pretrial arrestees from defendants not rearrested while awaiting trial. For example, pretrial arrestees were more likely to be living alone or with their parents. They were also more likely to be unemployed and recipients of public assistance.

Besides considering the characteristics that distinguish pretrial arrestees from other defendants, it is important to assess the extent to which these characteristics can successfully predict pretrial criminality. Such prediction analyses are now in progress as part of the Lazar evaluation study. They employ a variety of techniques, including those previously

TABLE 3

REACTIONS OF THE COURT TO PRETRIAL ARRESTS

Action	First Pretrial Arrest	Second Pretrial Arrest	Third Pretrial Arrest
Detained	6%	3%	11%
Bond increased	18%	29%	41%
Bond set	28%	19%	22%
Other change	10%	10%	10%
No action	38%	39%	16%
TOTAL	100%	100%	100%
Number of cases	397	107	29

TABLE 4

ORIGINAL CHARGES FOR DEFENDANTS REARRESTED VERSUS NOT REARRESTED DURING PRETRIAL PERIOD

ORIGINAL CHARGE	Defendants Rearrested		Defendants Not Rearrested	
	Number	Percent	Number	Percent
Part I	198	42%	664	27%
Part II	272	58%	1,819	73%
TOTAL	470	100%	2,484	100%
	x^2=44.5	p=0.00		
Crimes Against Persons	85	18%	426	17%
Economic Crimes	189	40%	569	23%
Drug Crimes	36	8%	310	13%
Crimes Against Public Morality	48	10%	223	9%
Crimes Against Public Order	90	19%	826	33%
Other	22	5%	129	5%
TOTAL	470	100%	2,484	100%
	x^2=79.9	p=0.00		

TABLE 5

CRIMINAL JUSTICE SYSTEM
STATUS AT TIME OF ORIGINAL ARREST

Criminal Justice System Status	Defendants Rearrested		Defendants Not Rearrested	
	Number	Percent	Number	Percent
On Pretrial Release	42	10%	120	5%
On Probation	58	14%	201	9%
On Parole	38	9%	50	2%
Other CJS Involvement (Including Combinations of Above)	15	3%	32	2%
No CJS Involvement	275	64%	1797	82%
TOTAL	428	100%	2200	100%

$\chi^2 = 87$ p=.00

used in a detailed analysis conducted by INSLAW of the Washington, D.C., area, which we describe next.

Crime Prior to Trial in Washington, D.C. (INSLAW Study)

Washington, D.C., has occupied a special place in the development of bail policy in the United States, serving largely as a proving ground for bail reform. Congress enacted legislation in 1966, for example, directing judges in the District of Columbia to release all defendants on personal recognizance (ROR), except those viewed as high failure-to-appear risks. In support of this policy, Congress established the D.C. Bail Agency to collect and verify information that would assist judges in assessing those risks and to supervise defendants released prior to trial.

Then in 1970, Congress enacted legislation authorizing the U.S. Attorney for the District of Columbia (the local prosecutor with responsibility for "street" crimes) to recommend the jailing of defendants found to be likely prospects for recidivism prior to trial if released. For a variety of reasons, this "preventive detention" provision has rarely been used since its passage.

These laws appear to have had some substantial--though not in each instance intended--effects on the system. The rate of ROR for felony defendants had increased to 45 percent by 1974, a level that has greatly reduced the need for the bail bondsmen and that ensures greater equity for indigent defendants. For the approximately 20 percent of the defendants who were jailed, however, high money bond appears to have been used rather than the preventive detention statute as the primary means of protecting the community.

One finding that is particularly relevant to this history of reform and confusion about the primary purpose of the bail is this: Among the felony defendants who were released prior to trial in 1974, the number rearrested prior to trial (14 percent)[10] was more than three times as large as the number who willfully failed to appear (4 percent). And 17 percent of all persons arrested had another case pending in the District of Columbia at the time of their arrest. Hence, at least in terms of sheer numbers, the crime on bail problem is not insignificant.

It is also evident that the judiciary has attempted to do something about this crime on bail problem by recognizing those defendants prone to recidivism and setting more stringent release conditions for them. The rearrest rate was substantially higher for defendants released followed their posting of money bond (20 percent) than for those who received personal recognizance of third party custody (11.6 percent).[11]

It appears, however, that the rate of rearrest prior to trial could be reduced further without increasing either the jail populations or the rate of failure to appear. This can be seen, first, by noting that defendants in the more crime prone ages of 18-21 were substantially more likely to be released on personal recognizance or third party custody (67.1 percent) than those aged 22-30 (56.9 percent).[12]

The potential for improved bail decision making is more strongly indicated by a statistical analysis of three sets of factors: factors that influence the decision to set financial conditions for the defendant, factors that influence the risk of rearrest prior to trial for those who were released, and factors that influence the risk of failure to appear for those released. These results are shown in Table 6. While none of these three outcomes (release, rearrest, and FTA) can be predicted with a particularly high level of accuracy, it is quite clear, at least for the District of Columbia, that the prediction of the risks of rearrest and failure to appear is far better than random and apparently better also than under current practice.

Note, for example, that if the defendant is a local resident, he is much more likely to be released without financial conditions, even though this factor is related to neither the risk of rearrest nor of failure to appear. That local residence is statistically related to the decision to set financial conditions that often result in detention is not surprising, since "community ties" generally has been viewed as an important predictor of the likelihood that the defendant will show up at trial; indeed, employment status, another aspect of community ties, is also taken into account in the bail decision process (in a manner, however, that is consistent with the goals of the bail decision). It is both enlightening and useful to see that a factor that has been viewed as important turns up, under scrutiny, to be statistically unimportant.

Local residence is not the only factor that creates some distance between what has been achieved and what has been achievable in the bail decision process in Washington, D.C. Another factor is drug use. If the defendant was known to be a user of illegal drugs, he was found to be more likely both to abscond and to be rearrested, but was not more likely to receive financial bond conditions. Furthermore, defendants who were charged with robbery, burglary, larceny, or other property crimes were more likely to be rearrested prior to trial, but not more likely to receive financial conditions.

Hence, it is apparent that the rate of rearrest prior to trial could be significantly reduced, without increasing either jail populations or failure to appear rates in the District of Columbia, by replacing factors that do not matter (such as local residence) with those that do (such as drug use).

Further Remedies

While our ability to predict is likely always to be less than perfect, opportunities exist for improving the bail decision process through the use of readily available data and statistical tools for analyzing the data. The problem of "crime on bail" is of sufficient concern[13] to warrant the exploitation of these and other such opportunities.

Another such opportunity involves the increased use of supervised release for defendants who present a high risk of misbehavior, but not quite high enough to warrant jailing. Such an approach could result in the supervision of many more defendants than would actually be rearrested in the absence of supervision. Thus, this might be a rather expensive response to

TABLE 6

COMPARISON OF VARIABLES EXPLAINING FINANCIAL CONDITIONS, FAILURE TO APPEAR, AND PRETRIAL REARREST

Explanatory Attribute	Behavior Being Explained: 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
No. pending cases	+	0	+
No. prior arrests/all crimes	+	0	0
No. prior arrests/crimes against persons	0	0	+
Arrested last 5 years?	+	0	0
No. arrests in preceding 12 months?	0	0	+
Defendant Descriptors:			
Local residence	–	0	0
Employed	–	–	–
Low income	–	0	0
Drug user	0	+	+
Caucasian	+	0	–
Older	0	0	–

Source: Jeffrey A. Roth and Paul B. Wice, *Pretrial Release and Misconduct in the District of Columbia*, PROMIS Research Publication no. 16 (INSLAW, forthcoming).

Note: The +, –, or 0 in each column indicates whether the attribute was found positively related, negatively related, or statistically unrelated to the probability of the event described by the column heading.

the pretrial crime problem. However, if pretrial crime were significantly reduced, the money might be considered well spent. Not only would the public be less victimized by crime; defendants would also be subject to less onerous conditions than posed by explicit preventive detention or high money bond.

A third approach would provide bail revocation and harsher sanctions for arrestees who are already involved with the criminal justice system. Thus, a defendant arrested during the pretrial period might be held in contempt of court for violating the prior release conditions, if probable cause were found that the defendant had committed the second offense. This general approach has been proposed by Senator Kennedy.[14]

Another possible remedy that has been proposed for the pretrial crime problem would provide for consecutive, rather than concurrent, sentences for defendants found guilty of a pretrial crime as well as the original release charge. This approach requires primarily a change in judicial sentencing practices (although a change in plea bargaining practices might also be involved).

A final suggestion for reducing pretrial criminality is to shorten the pretrial period, either by providing speedier trials for all defendants or by accelerating the trials of defendants who pose high risks of committing pretrial crimes. Prediction difficulties aside, this approach seems unlikely to reduce pretrial crime significantly. While the likelihood of rearrest seems to increase as time passes, data from the Lazar evaluation indicate that most rearrests occur fairly early in the release period. For example, in the eight-site sample, 16 percent of the rearrests occurred within one week of the original arrest, 45 percent within four weeks, and 67 percent within eight weeks. Thus, feasible "speedy trial" provisions would seem unlikely to reduce pretrial crime levels significantly.

In summary, there does not at this time appear to be a single "remedy" for the problem of pretrial criminality. The difficulties of accurately predicting pretrial crime and the fact that arrestees have been charged with crimes, but not found guilty of them, pose a variety of concerns for those seeking better ways to balance protection of the community and preservation of defendants' rights. This reality will affect the ability of Career Criminal Programs (and others as well) to respond effectively to the pretrial crime problem, at least in the near future. To the extent that opportunities do exist to enhance the bail process along the several fronts indicated, however, we would hope that these opportunities are not missed.

Footnotes

1. As quoted in The Pretrial Reporter, March 1979, p. 3.

2. Address of Senator Edward M. Kennedy to the National Governors Conference on Crime Control, June 1, 1979.

3. As quoted in The Pretrial Reporter, July 1979, p. 8.

4. Yankelovich, Skelly and White, Inc., The Public Image of Courts: A National Survey of the General Public, Judges, Lawyers and Community Leaders, Volume I, May 1978, pp. 184-87. This survey also ranked public confidence in state and local courts below that in many other major American institutions, including the medical profession, police, business and public schools.

5. Although the Court in this case was dealing explicitly with the conditions of confinement and not with the initial decision to confine prior to trial, the implications are clear. In order to find that no rights of the detainees had been violated, the Court rejected the standard adopted by the lower courts, which had ruled that only those conditions that are dictated by "compelling necessity" could be imposed on pretrial detainees. Instead, the Court held that only conditions amounting to punishment are proscribed; thus, the confinement itself is not punishment and the initial decision to confine or not should not be driven by considerations of the presumption of innocence.

6. William M. Landes, "Legality and Reality: Some Evidence on Criminal Procedure," Journal of Legal Studies, Volume III (2), June 1974, pp. 287-337.

7. The bond system has also been widely criticized as being inherently unfair to poor defendants, who may have difficulty raising bail amounts and thus remain in jail, while more affluent defendants facing similar charges secure release quickly.

8. Jeffrey A. Roth and Paul B. Wice, Pretrial Release and Misconduct in the District of Columbia (INSLAW 1979). This study was based largely on an analysis of data from the Prosecutor's Management Information System (PROMIS) and specially collected data on actual bail decisions and outcomes.

9. All of the analyses by charge in this paper consider only the most serious charge for arrests involving more than one charge.

10. Recall that the Lazar study found pretrial rearrest rates ranging from 7.5 percent to 22.2 percent for the eight sites studied, with an aggregate rate of 16 percent for all sites.

11. Risk of failure to appear (FTA) is also recognized. The FTA rate was lower for ROR defendants (3.9 percent) than for defendants released after posting money bonds (5.0 percent).

12. While older offenders tend to have longer criminal records, solely because of their age, study after study has found them to be less criminally active. See, for example, Marvin Wolfgang, "Crime in a Birth Cohort," Crime and Justice Annual (Chicago: Aldine, 1973), p. 115; Peter Greenwood, et al., The Rand Habitual Offender Project: A Summary of Research Findings to Date (Santa Monica, California: Rand, March 1978), p. 11; Kristen M. Williams, The Scope and Prediction of Recidivism (INSLAW 1979).

13. Preliminary results of a recent INSLAW survey designed by John Bartolomeo indicate that 22 percent of the prosecutors sampled regard the reduction of crime on bail to be "absolutely essential," with another 57 percent regarding it as "very important."

14. See Senator Edward M. Kennedy, "Bail Reform: A Pressing Need," New York Times, July 15, 1979, p. A23.

END