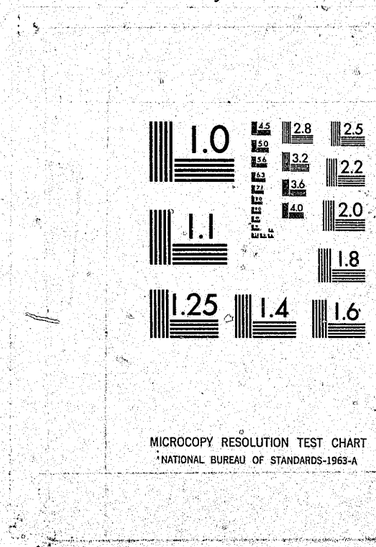

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Research Report

Judicial Decision Guidelines for Bail:

The Philadelphia Experiment

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James K. Stewart
Director

Judicial Guidelines for Bail: The Philadelphia Experiment

John S. Goldkamp
Department of Criminal Justice
Temple University

and

Michael R. Gottfredson
Department of Criminal Justice
Claremont Graduate School

July 1984

U.S. Department of Justice
National Institute of Justice

This project was supported by Grant No. CL-1 awarded to the Michael J. Hindelang Criminal Justice Research Center of Albany, New York, by the National Institute of Corrections and the National Institute of Justice (Interagency Agreement No. 80-IJ-R-027), U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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FOREWORD

by

Hon. Joseph R. Glancey
President Judge,
Philadelphia Municipal Court

In 1978, Drs. Goldkamp and Gottfredson proposed to study the feasibility of a "guidelines" approach to bail setting in the Philadelphia Municipal Court. The guidelines technology, we were informed, had been introduced in other criminal justice settings--namely in reforming sentencing and parole practices--with some interesting results. The National Institute of Corrections appeared willing to sponsor the project because of their belief that bail practices played a major role in jail overcrowding. On our part, we were intrigued by the proposal because of the possibility that a more objective procedure for determining bail could result and because of the need for a framework that could help us assess just how similarly situated defendants were being and should be treated by our judges.

Although we were at first uncertain, we felt as well that the proposed research might in some way help minimize the side-effects of disorganized bail practices that sometimes appear to detain defendants before trial who should be freed, while releasing defendants who perhaps ought to be detained. We were further interested by the proposal because of the practicality of its method: the researchers would through empirical methods describe our bail practices, outline the criteria guiding our decisions and, perhaps most importantly, measure the consequences of those decisions--in terms of the use of detention and the rates of absconding or crime committed by defendants during pretrial release. In my view, the method held promise for addressing policy in bail more honestly: most judges are subjectively concerned with the dangerousness of defendants but do not acknowledge this openly. Perhaps the guidelines approach would allow us to come to grips with that bail agenda more openly and perhaps more objectively as well.

With these questions in mind, we agreed to join with the research project, and in periodic meetings throughout 1979 and 1980 the research staff met with a group of our judges, grandly styled the "Judicial Steering and Policy Committee of the Bail Decisionmaking Project," to discuss findings as they emerged from study of 4,800 bail decisions made by 20 Municipal Court judges. Together the judges and the researchers wrestled with the findings and debated their implications for the operation of bail in Philadelphia. Investigation in one area led the judges to request that the researchers move their analysis to yet another. The findings of the feasibility study--which are described in the preceding report--raised enough questions about the effectiveness

and consistency of bail practices that a model was developed that might better guide bail practices in the future.

The guidelines for bail produced were in fact quite simple--based on a matrix which measured the seriousness of the criminal charge, as viewed by our judges, against the statistical risk of flight and/or rearrest during pretrial release. In this newly developed model to guide bail decisions, we found ourselves for the first time openly facing the question of "dangerousness" and having a manner of dealing with it that was not wholly subjective. Moreover, the guidelines grid incorporated knowledge of our past practices with an actuarial dimension measuring the statistical likelihood of failure-to-appear and rearrest.

Although a great deal was learned from the feasibility study in which bail guidelines were actually designed, the real question was "Does having bail guidelines make any significant difference in the practice of bail?" If guidelines could not be easily used, if guidelines would not "work," then much of the rest was academic.

At this point we agreed to conduct a further study, this time a first-of-its-kind experiment (supported this time by the National Institute of Corrections and the National Institute of Justice jointly) in which the guidelines bail approach would be contrasted with normal practices. To measure this, 16 judges were randomly selected either to employ the guidelines approach or to conduct bail in their normal fashion. Data were collected on nearly 2,000 cases decided by the two groups of judges during the experiment which lasted from January, 1981 to March, 1982. The results are set forth in this report.

What came through "crystal clear" was the finding that guidelines result in a more consistent and more equitable setting of bail while, at the same time, maintaining a firm grip on the matter of misconduct among released defendants. These implications and others are well set forth in the following pages. In my view, the long and sometimes complex research process has to a surprising extent lived up to its promise and beyond: it has provided a tool of great practical value. As proof, the Municipal Court moved in the Spring of 1982 to adopt bail guidelines for routine use by all its judges when they decide bail.

Even so, this research--the feasibility study and the actual guidelines experiment--represents only the first step. We must now fine tune this process, and be prepared to confront other weighty questions. As the bail guidelines foster greater consistency by our judges in the setting of cash bail, for example, we may eventually realize that cash bail as currently practiced is merely a "hedge" factor that we judges hide behind and use to ignore the fact that we ourselves are responsible for the detention of certain defendants--not the defendants' lack of cash.

Possibly, then, one value of the guidelines will be that it has made us confront more squarely the fact that in setting bail we are really making a detention decision. We may eventually arrive at a point where, instead of camouflaging our decision in terms of cash bail, we may establish more direct decision categories such as 1) outright cash release, 2) alternatives to jail involving conditions (e.g., conditional release, supervision), or 3) detention--with no dollar signs attached. Will we have the courage to do that? Only the future will tell.

PREFACE
by
Don M. Gottfredson*

In their reports of the careful development, implementation, and testing of guidelines for the bail decision Drs. Goldkamp and Gottfredson have made four distinctive, important contributions. These concern science and social action, knowledge of bail decision making, the generality of the guidelines model, and the role of experimentation in policy development. The first and most general contribution has to do with the means by which technologies of science can be brought to bear more usefully on problems of social affairs, including matters of (but not unique to) criminal justice. The second benefit is found in the added knowledge made available from their detailed study of the bail decision. Neither the long standing debates about this decision nor its importance in the criminal justice process have been matched by an appropriate degree of empirical research. Bertrand Russell noted that "Aristotle could have avoided the mistake of thinking that women have fewer teeth than men by the simple device of asking Mrs. Aristotle to open her mouth."[1] Settling debates by examining the evidence is, of course, a fundamental part of the scientific method. Collecting the data necessary for such a study as described here, however, is no simple task. The authors and their colleagues spent 14 months collecting the needed data for the experimental implementation alone; data were required for nearly 2,000 cases, with more than 100 data items for each case. The third advance is in the extension of evidence about the potential utility of guidelines models for criminal justice decisionmaking. The authors are the first to attempt the development and use of the guidelines model for the bail decision. And, they describe the first implementation of guidelines within a rigorous experimental design. Each of these contributions deserves discussion.

The Action Research Model

The attitudes and styles of authors of social research reports are revealed in their writings. These authors provide, in their study, an excellent example of the action research model as conceptualized by Kurt Lewin. Shortly before his death, this pioneer social psychologist described a process of planning: first, from a general idea about some objective desired; then from a careful analysis of the idea and means available; then emerging from further fact-finding about the situation with a general plan for reaching the objective; and then arriving at a decision about the first "step of action" needed. He noted "Usually this planning has also somewhat modified the original idea."[2] Next, the first step of the plan is executed, followed by more fact-finding. The latter has four functions:

*School of Criminal Justice, Rutgers University

Similarly praiseworthy is the collaborative attitude of the research staff. As members of such an enterprise, they cannot be divorced wholly from value choices to be made at many points along the way. But the decision not to collaborate with those responsible for critical decisions such as those made by the bail judge is in itself an important value choice. It is no longer enough for the social scientist to be content with demonstrating disparities in sentencing, or the setting of bail, or releasing on recognizance. Nor is it enough to be content with analyzing variation among judges or among classifications of offenders. It is not enough to stand outside, viewing with alarm; and it is not enough to describe problems in criminal justice without assisting with solutions.

The action research model illustrated by this study provides a means by which the judiciary themselves can define and use decision policies in an evolutionary system of policy control. Within the framework described, bail decisions can be more open, more fair, and perhaps more rational and just.

The Bail Decision

As the authors note, there has been and continues to be much current debate surrounding two fundamental issues that often are perceived as conflicting. From one perspective, reflecting justifiable concern with crowding in jails across the nation, it is asserted that many are needlessly detained awaiting trial, unable to make bail. At the time of this study, and typical of jail populations generally, it was estimated that more than half of all 3,695 inmates were held for this reason in the Philadelphia prisons (jails); and a third of the population were held only for want of bail. Thus, more effective bail decisionmaking has considerable potential for relief of the present critical crowding problem. From another frame of reference, concerned with public protection and tending to favor the pretrial detention of presumed "dangerous" defendants, it is argued that bail decisionmaking ineffectively protects the public from harm. The debate on this issue, of course, relates to the traditional presumption of innocence, to the traditional purpose of bail as ensuring appearance for trial, to present abilities to predict "dangerousness," and to issues of the propriety of punishment for offenses not yet committed but only expected.

The authors note that these issues are related: ". . . ineffective, disorganized bail policy and practices may contribute simultaneously to overcrowding by inappropriately holding defendants who could be trusted at liberty pending further court proceedings and to crime in the community by fostering the release of 'dangerous' defendants who commit serious crimes." This highlights the two types of decision errors desired to be avoided in bail decisionmaking. The Type I error, more noticeable and hence more apt to result in criticism of the decision, is that of releasing a defendant who subsequently fails to appear for trial or who does harm. The Type II error, not only less apparent but

not possible to demonstrate directly without an experiment, is that of failing to release a defendant who would not fail to appear and would not do harm. This defendant not only is held unnecessarily but increases jail crowding; moreover, the accused but not convicted defendant is subject to the misery of jail and to any of its criminogenic effects. Thus, effective bail decisionmaking would result in tolerable levels of both failures to appear (or new crimes) and jail use (and crowding).

It is noteworthy that the judges in this study included, in developing the guidelines, not only a risk-assessment dimension but also a concern for the seriousness of the charges against the defendant. As the authors note, the traditional bail standard of the seriousness of the charge is partly in conflict with the risk dimension (since the correlation of measures of the two is slight). What appears to have been sought is a weighing of the potential costs of the two types of errors discussed previously. " . . . making a mistake with a 'low risk' rape defendant, the judges agreed, would be more grave than making a mistake in the case of a 'high risk' numbers runner." Thus, the guidelines matrices developed, which classify defendants by "charge severity" and "probability of failure," may more summarily but aptly be described as "stakes by risk" matrices. Punishment, when the accused has not been convicted, is not at issue; but the stakes involved in a possibly wrong decision are. Defendants assigned to release on their own recognizance or low bail are those cases for whom the comparative assessment of both the stakes and the risk are seen as justifying the decision.

Voluntary Guidelines?

This is the first application of the Guidelines Model to bail decisions. Having originated in the area of parole decisionmaking and been extended to the arena of judicial sentencing, the results reported have had somewhat mixed reviews. The initial concern of this study, of course, was with the feasibility of similar guidelines for the bail decision; later, the project addressed the consequences of use of the guidelines procedures developed. Besides addressing these questions, however, the project has yielded information for a more general, growing debate on the topic. That debate has to do with whether or not "voluntary" guidelines will "work" or whether rules must be imposed in order to achieve the desired objectives of increased equity and rationality.

Hanging in my office is a gift from a friend which reads "If voluntary compliance worked, Moses would have descended from the mountain with ten guidelines." This expresses the view that guidelines developed and used by the judges (or other decisionmakers) themselves -- with no requirement that they do so -- are not to be expected to be used. Rather, the imposition of rules limiting discretion is to be favored.

The evidence from this study is convincing that bail guidelines that are voluntary can lead to the degree of compliance sought, and, moreover, can result in achievement of the objectives of the process. Thus we are reminded that when to simple questions we receive contradictory answers from a variety of sources we perhaps have not been asking the right questions in the right way. This study shows that we need to ask under what circumstances, with what effort, with what degree of collaboration, competence, diligence, and creativity can voluntary (and involuntary) guidelines work -- and in respect to what goals.

Experimental Implementation

This is the first application of the Guidelines Model to utilize an experimental design in order to rigorously and carefully assess the results. Anyone familiar with the challenges and difficulties of carrying out an experimental design in a large urban criminal justice system will be aware of the significance of this achievement. For this study, different actions and paperwork were required by personnel throughout the process, depending on whether the case was designated as experimental (guidelines) or control. Not only the judges, but the court data clerks, pretrial service workers, and others participated. They not only had to learn and to use new procedures for the experimental cases; they were required also to follow both the old and the new procedures in all cases. But they did it. Describing this, as the authors do, as ". . . at times an undertaking of substantial dimensions" seems a substantial understatement.

The experiment was successful. Read the informative results.

On Paternalism and Bias

This preface is one of strong praise for the achievements of the investigators and the Philadelphia courts. It is meant to be. Some may suspect the writer to be biased, possibly due to paternalistic attitudes regarding some of the guidelines concepts employed and toward half the authors. Let the reader, the criminal justice community, and history decide. After all, that is the way of science.

NOTES

1. Peter, L.J., Peter's Quotations, New York: Bantam Books, 1977.

2. Lewin, K., "Group Decision and Social Change," in Newcombe, T.M. and Hartley, E.L. et al, Readings in Social Psychology, New York: Henry Hold and Co., 1947, 330-344, p. 333.

3. Ibid., pp. 333-334.

4. Ibid., p. 334.

5. Toch, H., "Training Researchers," Society, 15, 3, 1978.

ACKNOWLEDGMENTS

The second phase of the work of the Bail Decisionmaking Project has benefitted from the efforts and cooperation of many individuals. First, the directors wish to express their gratitude to the National Institute of Corrections and the National Institute of Justice for their support. In particular we would like to thank Judith Friedman and Cheryl Martorana who monitored the study and offered valuable criticism at various stages. Again we are indebted to Dean Don Gottfredson for his assistance and feedback--without his contribution, the project would never have succeeded.

We owe our greatest debt to the judges and employees of the Philadelphia Municipal Court and Pretrial Services Division of the Philadelphia Court of Common Pleas. Their contribution extended beyond allowing us access to data; rather they agreed to let us work with and among them, to complicate their lives and as a result often found us underfoot throughout the duration of the bail experiment.

It is fitting to point out that none of the research--either in its developmental or experimental phases--could have been possible without the vision and commitment of the Hon. Joseph R. Glancey, President Judge of the Municipal Court of Philadelphia. Judge Glancey's firm grasp of the research issues (whether legal or social scientific), his patience, perseverance, diplomatic skills and inexhaustible good humor deserve much of the credit for the progress made by the project.

In addition to Judge Glancey, we wish to thank the judges of the original Judicial Steering and Policy Committee--Judges Conroy, Cosgrove, Lehrer, Margiotti, and Silberstein--as well as those who served as the first users of guidelines: Judges Harris, McCormack, Brady, Jackson, Silberstein, Blount, Macones and Margiotti. Although they did not volunteer for the experiment, they were very cooperative and they did their best to make use of the new bail approach in a constructive manner. The other judges of the Municipal Court deserve credit as well. They displayed considerable interest in the project and were quite willing to debate the merit of the research freely at our meetings held during the experiment as well as at its conclusion.

Many others played supporting roles in setting up the experiment and contributing to its smooth functioning. We were very grateful to the Hon. Edward J. Bradley, President Judge of the Court of Common Pleas, for permission to have access to data held by the Court of Common Pleas. Dewaine L. Gedney, Jr., at that time Director of the Pretrial Services Division of the Court of Common Pleas (which serves the judges of Municipal Court in their bail duties), continued to play the key role in the experimental stage of the research that he had begun in the first phase. Nick served not only in a central advisory capacity, for he had a practical and intellectual grasp of the pretrial function probably

without parallel, but he arranged for the full cooperation of his agency with the experiment. In addition to giving the staff access to the required data and providing working space, he participated in designing the paperwork required for the experiment and in the training of pretrial services employees so that they could undertake the additional functions that the experiment required. His insights were valuable and his participation was indispensable; quite simply the work could not have occurred without him.

We would like to thank as well his successor at the Pretrial Services Division, Edward Halligan, who continued the same cooperation with the research staff during sometimes frenetic times and showed some special tolerance when we had to revisit his agency to double check certain items of information. We are grateful to the other supervisory staff also and to the pretrial interviewers and other pretrial services personnel who made the project successful.

Our sincere thanks extend as well to Bernard Scally, III, the able administrator of the Municipal Court, and his staff. Bernard Scally rendered assistance in countless instances when the wheels of the experimental process needed lubrication and when advice was needed relating to potential problems. The court computer clerks of his staff should also be singled out for their important role. These individuals--David Perri, Louis Paolore, Vince Smarro, Joseph McCully and Pat O'Connell--guarded the integrity of the research design by learning which judges were "experimentals" and which were "controls" and by guaranteeing that the correct bail paperwork (the guidelines or traditional versions) was forwarded to the appropriate judge. In addition, their reports provided us with valuable knowledge about how the guidelines process was functioning. David Perri, their supervisor, deserves special thanks for his work "beyond the call of duty" in staying alert to how the process fared, often coming in during his off-hours to observe or to assist in improving the guidelines routine.

The directors would also like to thank members of the research staff who contributed their labor to the seemingly endless tasks of collecting, cleaning and analyzing the data. Karen Barron, who played such an important role in the feasibility study, must be thanked once more for the work she contributed in preparing for the data collection for the experimental study. A major role was played by Patricia Markey, Data Collection Coordinator. Pat not only supervised the training of coders and ongoing data collection activities (which were unusually complex) but served as the staff monitor of the entire experimental process. This meant not only serving as a liaison with the pretrial services agency and interviewers, court computer clerks and judges, but also trouble-shooting when problems in any area arose. In addition, she helped develop and carry out training for each of the parties involved in the experiment. Pat's background, her ability to organize and her interpersonal skills were responsible

for a high quality data collection operation; the experiment could not have been carried out without her special organizational abilities.

George Leon has our deep appreciation for his tireless efforts in cleaning, organizing and analyzing the data once collected; his computer skills and analytic savvy (mixed with a dry sense of humor) have improved our overall effort immeasurably. Ann Pastore contributed her special talents in producing our graphics; she has our sincere thanks. Dr. Leona Aiken has provided critical insights that have notably enhanced our analysis; we are especially grateful to her.

Last but far from least, we wish to convey our appreciation for the work of our indefatigable coders. The efforts of Velva Lilly, Anthony Moore, Valerie Patton, Kelly Ann Williams, Albert Smith, Mindy Kanoff, Michele Keating and Vanessa Graves were outstanding, given the tedious nature of their assignment. Their sense of team work and efficiency were remarkable; without their contributions, of course, we would have little about which to write. Kelly Ann Williams and Brenda Solomon deserve a special commendation for their heroic efforts involved in correcting miscoded cases at the eleventh hour.

The opinions expressed and the conclusions drawn in this report are the authors' alone and not necessarily those of the funding agencies or of the participants in our study, the judges of the Municipal Court of Philadelphia or the staff of the Pretrial Services Division.

John S. Goldkamp
Michael R. Gottfredson

NOTE TO THE READER

Before proceeding with a description of the bail guidelines experiment in Philadelphia and its results, the reader may wish to note two sources that, taken with the earlier study, may help place the current findings in perspective. The reader is first directed to Chapter Seven of this report which serves as a brief summary of the issues confronted in the Philadelphia bail experiment and the implications of the chief findings. Chapter Seven has been designed as a useful, extractable excerpt to provide the interested reader with an overview of the study in a nutshell. Secondly, the reader should note that the research focusing on bail guidelines has been conducted in several stages and reported in the following companion materials: 1) a report of the feasibility study in Philadelphia, Bail Decisionmaking: A Study of Policy Guidelines (Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981), distributed by the National Institute of Corrections; and 2) a practical guide and summary to the guidelines work, The Development and Implementation of Bail Guidelines: Highlights and Issues (Goldkamp, 1984), distributed by NCJRS (NIJ). In addition, further refinement and examination of the utility of the guidelines approach to bail and pretrial detention is in the planning stages at the National Institute of Justice.

Chapter One

INTRODUCTION TO THE GUIDELINES RESEARCH

In this report, we describe the results of an experimental implementation of bail guidelines in Philadelphia's Municipal Court between January, 1981 and March, 1982. The first phase of our guidelines research, during which in-depth study of bail practices and their consequences was undertaken and models of decision guidelines for bail were developed, has been detailed in a previous report (Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981). In that report, important background is provided for an understanding of the current experiment, including discussions of the selection of the site and the guidelines method. A conclusion of that report was that the guidelines approach, pioneered by Gottfredson and Wilkins (1978) in the area of parole and sentencing, had the potential to serve as a resource for addressing key continuing issues related to bail and the use of pretrial detention in the United States. As a result of that study, bail guidelines were refined and used in an experiment in Philadelphia to learn whether the hypothesized advantages of bail guidelines would accrue in actual practice.

Since formulation of the research plan for the bail guidelines project in Philadelphia, doubts about bail and detention practices have risen to an unprecedented level in the United States.[1] Not only have bail-related issues increasingly played a role in the pronouncements of public officials (e.g. former Attorney General Bell, Mayor Koch, Chief Justice Burger, Attorney General Smith, President Reagan) in recent years, but revision of bail laws in the States appears to be accelerating beyond a level of activity previously witnessed.[2] Public concern, remarkably, has reached such a point that eight states have passed amendments to their constitutions dealing with bail or pretrial detention since 1978.[3]

Interestingly, the current debate--for which the guidelines research has important implications--is dominated by two seemingly contradictory perspectives: a view that inefficient bail practices are a major contributor to overcrowding in the nation's jails, and a view that bail practices fail sufficiently to confine "dangerous" defendants before trial.

The overcrowding concerns are a legacy of the thinking of the bail reform movement of the 1960's with a pragmatic tint. That movement sought to facilitate the release pending trial of poor defendants who, being non-seriously charged and having reasonable ties to the community, posed little risk and thus were needlessly clogging the jails (Foote, 1954; Alexander et al., 1958; Ares, Rankin and Sturz, 1963; Freed and Wald, 1964). Despite the noteworthy achievements of bail reform (Thomas, 1976; Goldkamp, 1980a; Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981; Lazar Institute, 1981), serious questions about the state of bail practices are being raised in jurisdictions experiencing jail

overcrowding across the United States not only based on a belief that bail practices are ineffective but also premised on a strong suspicion that they are not cost efficient. Pressure may be brought to bear on bail practices because their improvement may be substantially less expensive than building new jail space.

In juxtaposition is a second belief, linked to the growing public fear of crime, that bail practices fail to protect society from arrested persons who return to the streets before trial to commit additional serious crimes. The debate over preventive detention--pretrial detention of "dangerous" defendants--can be traced back to the 1950's but has grown stronger in the last decade.[4] Proponents of this perspective argue that bail practices ill-advisedly favor the defendant's interest to remain at liberty before conviction based on the presumption of innocence over the public's right to be safe. As a result, they have proposed (and enacted) measures to emphasize the "danger" goal of bail and to extend the use of pretrial detention.[5]

In short, bail and detention practices have been increasingly called into question in connection with the growing jail overcrowding issues and the popular movement toward preventive detention. On the surface, these two critical foci on bail practices appear contradictory: an implication of the overcrowding perspective is that too many defendants are being needlessly held before trial; the clear thrust of the preventive detention perspective is that jails do not hold enough defendants.

Although the overcrowding and detention-for-danger debates seem to be conducted in isolation of each other, they should not be viewed as contradictory or as separate issues. They are not mutually exclusive: ineffective, disorganized bail policy and practices may contribute simultaneously to overcrowding by inappropriately holding defendants who could be trusted at liberty pending further court proceedings and to crime in the community by fostering the release of "dangerous" defendants who commit serious crimes. In fact, these critical perspectives may be most usefully understood as two sides of a single concern--that bail decision making and the resultant use of pretrial detention are insufficiently selective.

The current research relating to development of and experimentation with bail guidelines in Philadelphia has sought to address key current concerns in adopting a balanced approach, one that gives equal weight to the nature and use of pretrial detention as well as to the performance of defendants who through bail decisions achieve pretrial release. The key to this approach--we have argued at length in the previous report--is to deal directly with the judges responsible for bail decisions and, whether they choose to accept credit for it or not, for the allocation of pretrial detention among criminally charged defendants.

In our collaboration with the judges, we were careful to avoid single-issue approaches. Rather, we sought systematically to make progress in a number of problem areas in the bail function and to avoid making advances in only one area in ignorance of or to the exclusion of others. Thus, the guidelines approach dealt not only with the criteria that should guide discretion, not only with the characteristics of bail decisions but also with their consequences. In addition to being concerned with FTAs (failures-to-appear in court) and rearrests (pretrial crimes), we were concerned with pretrial detention. The danger issue was considered in the context of larger issues that have an impact on bail and pretrial detention, such as the exercise of discretion and equity.

The Development of Bail Guidelines: The Feasibility Study

The decision approach developed in the first phase of the Philadelphia research and tested in the second, experimental phase, was based in concept on the guidelines technology pioneered in the study of parole and sentencing by Gottfredson, Wilkins and Hoffman (1978). The overriding aim of the guidelines research applied to bail in Philadelphia was to learn whether some of the promising features of the guidelines concept could contribute progress in addressing some of the troublesome issues that continue to characterize the bail function and the use of pretrial detention at least in one major urban jurisdiction. Before discussing the guidelines experiment itself, it may be useful to highlight some of the assumptions underlying the development of guidelines that preceded it.

In the developmental study, we argued that similarities between the bail decision, and sentencing and parole decisions--for which the guidelines decisionmaking concept was initially developed--suggested that the guidelines approach might represent an important resource. For example, the bail decision (including the options of release on recognizance, uses of cash bail, denial of bail, etc.) involves fundamental questions of liberty and crime prevention as do the sentencing and parole decisions. Moreover, the bail function, like sentencing and parole, has traditionally had a large amount of decisionmaker discretion, carried out often in the absence of clearly defined, publicly knowable criteria. Bail, like the parole and sentencing functions, has been criticized as low-visibility, improvisational, inequitable and at times as having little demonstrable relationship to the stated objecrives of the decision. These common characteristics are precisely those that originally prompted the development of guidelines in the parole and sentencing areas.

But, clearly, the bail decision differs in major respects from other criminal justice decisions. Most fundamentally, it is made about persons who are accused of criminal conduct and thus involves liberty and confinement issues as they relate to defendants <u>prior to adjudication</u>. Although many of the overtones

of the bail decision have parallels with sentencing and parole, for example, the aims of the decision in its pretrial context and other characteristics such as the time frame for the decision and the information available at that early stage distinguish it as a singular decision stage in the criminal process indeed. Whereas an understanding of the common themes running through the sentencing, parole and bail decisions suggested that the Gottfredson-Wilkins guidelines concept might have strong merit in an application to bail, notable dissimilarities relating to specific goals and policies provided an argument for careful study of the feasibility of bringing the guidelines approach to bear on the bail function.

The feasibility study (Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981) was conducted in Philadelphia's Municipal Court and included study of 4,800 bail decisions of the court's 20 judges between the summers of 1978 and 1980. The research strategy was strongly decisionmaker oriented, calling for a close collaboration, a working relationship, between the judges of the Municipal Court and the research staff. Representatives of the pretrial services agency were also included in the Steering and Policy Committee which met periodically to review findings from empirical study of bail decisions (specifically focusing on the use of ROR and cash bail) as well as the detention of defendants that resulted and the performance (in terms of failures-to-appear and rearrests) of defendants who gained pretrial release.

The work of the feasibility study was planned in two parts, the first being a descriptive study of bail practices, their characteristics and consequences in Philadelphia. During the descriptive component, data were analyzed to fuel debates concerning the goals of the bail decision and the standards that governed it. An initial task, for example, was to describe the current practices of judges deciding bail as accurately as possible, to identify those criteria that appeared to influence their decisions most heavily.

Discussion of current practices--of what "was"--served then as a springboard for the second part of the feasibility study, consideration of what "ought" to be. A first step involved appraisal by the Steering and Policy Committee of the current "state of affairs" in bail in Philadelphia. The following kinds of questions were addressed by the judges using the empirical findings as a point of departure: Were bail decisions made in line with appropriate goals or criteria for evaluating defendants? Was there reasonable consistency in the decisions of the Municipal Court judges? To what extent did pretrial detention result from bail practices and for what kinds of defendants? To what extent did defendants abscond or become rearrested for crimes committed during the pretrial period?

A central goal of this second, prescriptive component of the feasibility study was to develop models for improving Philadelphia bail decisions in the event that the Municipal Court judges viewed

that as desirable. After much debate among the judges and refinement by the research staff, a grid reflecting risk and seriousness was adopted as the model of bail guidelines to be tested in a subsequent experiment. These guidelines are represented in Figure 1.1.

Guidelines Development as a Policy Review Tool

In constructing "rules" to be used to guide the exercise of discretion in the bail function, significant questions of public policy arose inexorably. Perhaps most fundamentally, the goals of the bail decision needed careful consideration and articulation. Discussions among the judges in this area reflected the confusion, ambiguity and polarity that has characterized debate about bail and pretrial detention generally over the decades in the United States (Goldkamp, 1979). The final guidelines model reflected in its risk dimension a concern with possible defendant flight as well as with crimes that might be committed by released defendants.

Another important debate focused on discretion: How much judicial discretion in bail is desirable? How much is too much and how much is too little? We can safely report that the judges did not initially look favorably on a reform that might limit their discretion. But, knowledge of disparity in Philadelphia bail decisions--one of the striking findings of the feasibility study--convinced the judges that based on concerns of equity, a balance between total decisionmaker flexibility and total consistency should be struck. Related to this discussion were reflections concerning the "tightness" and "looseness" of guidelines and the factors that should provide a rationale for making decisions that departed from guidelines. Other issues, though less central, needed to be debated by the judges in the development of the policy matrix--such as the preparation and maintenance of the information required for use of the guidelines, provisions for future feedback, etc.

In an important sense, the concrete results of difficult policy debates were built into the final version of the bail guidelines: in the nature of the dimensions--risk and severity--defining the decision matrix, the formulation of suggested bail decision ranges, and the provision for noting reasons when departures from the guidelines would occur. Each of these facets of the guidelines format were the result of coming to grips with difficult, long-standing bail issues.

Perhaps potentially the most controversial feature was the adoption of a risk dimension in the guidelines "grid." Inclusion of the risk dimension represents a stand on two related issues: the goals of the bail function and prediction. As has been noted elsewhere, there has been an ongoing question about whether, in addition to assuring a defendant's appearance at trial, protection of the public from dangerous defendants was also a legitimate goal of bail. Although critics have argued strenuously against a

Figure 1.1 Bail guidelines: judicial worksheet

BAIL GUIDELINES: JUDICIAL DECISION

Date _____ Log # _____ Name of defendant _____ Police photo # _____ Calculated by _____

Guidelines Matrix

Probability of failure

LOW ← → HIGH

Charge severity: LOW ↓ HIGH

	Group I	Group II	Group III	Group IV	Group V
1	ROR	ROR	ROR	ROR	ROR
2	ROR	ROR	ROR	ROR	ROR
3	ROR	ROR	ROR	ROR	ROR-$500
4	ROR	ROR	ROR	ROR	ROR-$500
5	ROR	ROR	ROR	ROR	ROR-$1,000
6	ROR	ROR	ROR	ROR-$1,000	$300-$1,000
7	ROR	ROR	ROR	ROR-$1,000	$300-$1,000
8	ROR	ROR	ROR	ROR-$1,000	$500-$1,000
9	ROR	ROR	ROR	$500-$1,500	$500-$1,500
10	ROR	ROR	ROR-$1,500	$500-$1,500	$500-$2,000
11	ROR-$1,500	ROR-$1,500	ROR-$1,500	$500-$2,000	$500-$2,000
12	ROR-$1,500	ROR-$1,500	$500-$1,500	$800-$2,500	$800-$3,000
13	$800-$3,000	$800-$3,000	$1,000-$3,000	$1,000-$5,000	$1,500 $5,000
14	$1,000-$3,000	$1,000-$3,000	$1,000-$3,000	$1,000-$5,000	$1,500 $5,000
15	$2,000-$7,500	$2,000-$7,500	$2,000-$7,500	$2,500-$7,500	$3,000-$10,000

Guidelines Decision _____

Judicial Decision: ☐ ROR ☐ Financial (amount) $_____

☐ IF DECISION DEPARTS FROM GUIDELINES, REASON(S):

- ☐ High probability that prosecution will be withdrawn
- ☐ High probability of conviction
- ☐ Low probability of conviction
- ☐ Defendant's demeanor in court room
- ☐ Sponsor present at hearing
- ☐ Defendant's physical or mental health
- ☐ Defendant's history of court appearance
- ☐ Defendant's relationship to complaining witness
- ☐ To cause guardian to be informed of defendant's arrest
- ☐ Defendant poses specific threat to witness or victim
- ☐ Presence of warrants, detainers, or wanted cards
- ☐ Other (explain): _____

Decision by _____

danger function in initial bail decisions, grounds exist for supporting its inclusion. The debate was held as well within the Steering and Policy Committee; many of the views encountered in the national debate were represented among the Philadelphia judges. Finally, however, it was concluded that the bail guidelines in Philadelphia would present information relating to both risk of flight and/or of pretrial crime.

Even if the judges had decided that court policy would concern itself only with risk of defendant flight, a second controversial issue would not have been avoided: prediction.[8] By wishing to incorporate risk-related information into the bail guidelines, the judges believed that their decisions would be improved and that the factors weighed in these decisions would be more related to the outcomes of concern (flight and crime during pretrial release). Yet, considerable debate has surrounded predictive judgments in criminal justice generally and in bail particularly. This debate, which has both weighty constitutional and social science overtones, does not deny the predictive nature of the bail task--for it may be appropriately described as a job of forecasting--but focuses rather on the relative weakness of the ability (clinical or statistical) to predict rare human events.[9]

As has been described in the report of the feasibility study, the Steering and Policy Committee reviewed carefully the arguments about predictive judgments. They examined the results of empirical analyses of actuarial predictions developed for FTAs, rearrests and rearrest for serious crimes only. The Committee viewed both FTAs and rearrests as appropriate bail concerns and argued that empirically based estimates were to be preferred to the improvisational, subjective judgments judges would otherwise use.

Adoption of the second dimension of the guidelines matrix, charge severity, was the result of addressing another controversial policy issue. Traditional bail practices have relied predominantly on the seriousness of a defendant's charges; this was heavily criticized by proponents of bail reform during the 1960's (Ares, Rankin and Sturz, 1963; Freed and Wald, 1964). Supporters of bail reform argued that community ties should be employed by judges in addition to or instead of knowledge of criminal charges. The research literature relating to prediction (Angel et al., 1971; Locke et al., 1970; Gottfredson, 1974; Clarke et al., 1976; Sorin et al., 1979; Roth and Wice, 1978; Goldkamp et al., 1981) has not found, however, that community ties are stronger predictors of FTA and rearrest than the criminal charge.

The Philadelphia judges, once again, took cognizance of the different arguments concerning the use of criminal charge and decided to include it for several reasons: a) because it was, the research showed, a factor heavily relied on by them in their recent decisions, and b) because it gave them a means of weighing the relative potential costs of mistakes in the bail decision--making a mistake with a "low-risk" rape defendant, the

judges argued, would be more grave than making a mistake in the case of "high-risk" numbers-runner.

A third difficult policy issue involved the formulation of decision ranges for the various categories of defendants that resulted from the classification according to risk and severity that is embodied in the guidelines matrix. Should the bail ranges be the result of mere speculation? Should they be based on the amounts assigned to like defendants in the past? Finally, the procedure that was agreed upon employed past bail amounts for defendants in each guidelines "cell" as the point of departure. The average ranges for past practices were modified by consideration of the rates of FTA, rearrest and pretrial detention recorded for Philadelphia defendants in each of the cells--thus, making use of a foundation originating in past practices but tempered by performance-related information.

Each of the decisions about the shape of the guidelines reflects a specific policy decision made by the judges after review of empirical findings and debate of the important policy implications. This procedure underscores the rationale and the potential value of the guidelines approach as advocated by Gottfredson and Wilkins. Whether one agrees or disagrees with one or another of the policy decisions made by the judges in developing the guidelines, a major step forward has been taken: judges have set policy in bail after an informed debate and its results are visible and subject to continued scrutiny in the future.

In the end, the guidelines format as shown in Figure 1.1 was decided upon and plans were made for an experimental implementation. The guidelines were meant to work in the following fashion: prior to initial appearance ("preliminary arraignment" in Pennsylvania), the staff of the pretrial services agency would investigate the background of each defendant and develop the information required for the completion of a worksheet (depicted here as Figure 1.2). The staff would determine the risk category (one through five) according to the formula shown as derived from the previous analyses and would also determine the appropriate charge severity category. This information would then be forwarded to the judge in the normal fashion at preliminary arraignment, along with a background summary on the defendant. Defendants could appear before a judge as quickly as a couple of hours after their arrest or in some cases--for example, on a busy weekend night--as long as 15 hours after arrest. (For cases in which statements are being taken from the defendants by the police, however defendants must appear before the judge within 6 hours.)[10]

The intersection of the risk dimension and the charge dimension in the guidelines matrix thus produces a presumptive bail decision, falling within an ROR range, an ROR/low cash bail range, or a cash bail range. Judges are meant to reach decisions within these suggested amounts for what might be described as

Figure 1.2 Pretrial services interviewer worksheet for preparing guidelines information

WORKSHEET—FOR BAIL GUIDELINES

Date | Log # | Name of Defendant

Police Photo # | Calculated by

CHARGE SEVERITY CALCULATIONS:

Charges: (list by Code Section Number)	Severity Level*	Offense Cat. (1-3+n/a)

* For Conspiracy enter "C", for lesser included offenses enter "LIO".

* ENTER HIGHEST CHARGE SEVERITY LEVEL FROM ABOVE TO RIGHT ____ * CIRCLE 1 PROPER 2 OFFENSE 3 CATEG'Y n/a

* ENTER NAME OF THIS OFFENSE (FULL)

☐ INDICATING CHARGE SEVERITY LEVEL HAS BEEN CIRCLED ON JUDGE'S MATRIX

RISK GROUP CALCULATIONS:

Check the Applicable Categories Below		Circle Value	COLUMN N And Enter in the Proper Column Below	COLUMN P And Enter in the Proper Column Below
☑ BEGINNING SCORE of.		(4)		4
☐ OFFENSE CATEGORY CRIME	☐ Category 1 (serious)..... ☐ Category 2 (misc).... ☐ Category 3 (prop'ty).	9 5 3		
☐ RECENT ARRESTS (w/i 3 yrs.)	☐ 1 Recent Arrest..... ☐ 2 Recent Arrests..... ☐ 3 or More Rec. Arr'ts	2 4 6		
☐ OFFENSE CATEGORY 1 WITH REC. ARRESTS	☐ With 1 Rec. Arrest..... ☐ With 2 Rec. Arrests.... ☐ With 3 or More.....	2 3 5		
☐ OTHER PENDING CHARGES	☐ 1 Pending Charge..... ☐ 2 or More Pend. Charges	2 4		
☐ FTA'S (w/i 3 yrs-willful)	☐ 1 Prior FTA..... ☐ 2 or More Prior FTA's..	1 2		
☐ OVER 44 YEARS of Age.....		4		
☐ OVER 44 WITH PRIOR FTA'S	☐ With 1 Prior FTA..... ☐ With 2 or More FTA's....	5 9		
☐ TELEPHONE AT ADDRESS where Residing.....		2		
* TOTAL EACH COLUMN IN THE SPACE PROVIDED TO RIGHT				
☐ If Column P is Larger than Column N: ENTER COLUMN N AMOUNT BENEATH COLUMN P AMOUNT TO FAR RIGHT AND SUBTRACT THE COLUMN N (SMALLER) AMOUNT FROM THE COLUMN P (LARGER) AMOUNT AND ENTER TO FAR RIGHT				☐ If Column N is Larger than Column P—Automatically Risk Group V

RISK GROUPS:

☐ INDICATING RISK GROUP HAS BEEN CIRCLED ON JUDGE'S MATRIX

☐ GROUP V - points 0 to -13
☐ GROUP V - points +3 to 0
☐ GROUP IV - points +8 to +4
☐ GROUP III - points exactly +9
☐ GROUP II - points +12 to +10
☐ GROUP I - points +19 to +13

Alphabetic List of Charges:

Level	Charge Description	Statute	Off. Cat.	Grade
L-8	AGGRAVATED ASSAULT (also F2)	18-2702	2	M1
L-13	AGGRAVATED ASSAULT	18-2702	1	F2
L-14	Arson - Endangering Prop. (also F1)	18-3301	1	F2
L-15	Arson (also F2)	18-3301	1	F2
L-13	Assault by Prisoner	18-2703	1	F2
L-9	Attempted Burglary	18-3502	1	F2
L-14	Att. Involl. Dev. Sexual Intercourse	18-3123	1	F2
L-14	Attempted Kidnapping	18-1901	1	F2
L-15	ATTEMPTED MURDER	18-2502	1	F2
L-14	Attempted Rape	18-3121	1	F2
L-6	Bad Checks — Over $200	18-4105	3	M2
L-10	Bribery in Official/Political Matters	18-4701	2	F3
L-12	BURGLARY	18-3502	1	F1
L-15	Causing A Catastrophe	18-3302	1	F1
L-1	Cigarette Tax Act Violations	72-3115-901-B	3	M3
L-8	Corruption of Minors	18-3125	1	M1
L-8	Crim. Attempt--$1000 ($1000 (also M2)	18-3304	1	M1
L-6	Crim. Attempt--Over $1000 (also M2)	18-3304	2	M2
L-7	Crim. Trespass--Defiant Trespa. (also F2)	18-3503	3	M3
L-7	Crim. Trespass--Bldgs/Occup (also M2)	18-3503	2	M2
L-4	Cruelty to Animals	18-5511	2	M2
L-2	Disorderly Conduct	18-5503	3	M3
L-2	DRIVING UNDER INFL. ALCOHOL/DRUGS	75-3731	2	M3
L-5	Duty in Case, Motor Vehicle Accident	75-3743	2	M3
L-6	Embezzlement by Officer/Emp	18-4304	2	M2
L-6	Extortion (also F3)	18-3923	2	M2
L-10	Facsimile -- Facsil., Fal., etc. (also M2)	18-4123	2	F3
L-6	Failure to Discharge	18-5102	2	M2
L-6	False Alarms Agnsts. of Pub. Safety	18-4905	2	M2
L-13	False Impr. to Law Enf. (also M3)	18-4906	2	M3
L-8	False Impr. to Law Enf. (also M1)	18-4906	1	M1
L-6	Forgery — Money, Securities, Stamps	18-4101	2	F3
L-13	F1 Off's Not Otherwise Incl'd	N/A	1	F1
L-9	F2 Off's Not Otherwise Incl'd	N/A	2	F2
L-10	F3 Off's Not Otherwise Incl'd	N/A	3	F3
L-10	Gambling (Devices & Inclusions)	18-5513	2	F3
L-10	Grad. Impr., Approp./Previo.-F1 & F2 Off's	18-5105	1	F3
L-2	Incest	18-4302	2	M2
L-14	Indecent Assault	18-3126	1	M2
L-3	Indecent Exposure	18-3127	3	M3
L-8	Interference with Custody of Child	18-2904	1	M2
L-13	Involl. Dev. Sexual Intercourse	18-3123	1	F1
L-8	Involuntary Manslaughter	18-2504	1	M1
L-13	Kidnapping	18-2901	1	F1
L-4	Liability for Conduct of Another	18-306(3)(c)	1	M2
L-3	Liquor Code Violations	47-4-493(3)	3	M3
L-1	Lotteries	18-5106	3	M3
L-1	LOTTERIES (& includ. offenses)	18-5512	3	M3
L-10	MANUF./DELIV. (w/I2) OF DANG. DRUGS	Title 35	2	M2*
L-11	MANUF./DELIV. OF NARCOTIC DRUGS	Title 35	1	M1*

Level	Charge Description	Statute	Off. Cat.	Grade
L-11	Manuf./Deliv. of Synthetic Drugs	Title 35	1	M1*
L-1	Miscel. M3 Viols. (not in 18 code)	N/A	3	M3
L-4	Misuse of Credit Cards -$50-$500	18-4106	3	M3
L-14	Murder	18-2502	1	M1
L-14	M1 Off's Not Incl'd (Non-Prop.)	N/A	1	M1
L-14	M1 Off's Not Incl'd (Prop. Off's)	N/A	1	M1
L-14	M2 Off's Not Incl'd (Non-Prop.)	N/A	2	M2
L-14	M2 Off's Not Incl'd (Prop. Off's)	N/A	2	M2
L-14	M3 Off's Not Incl'd (Non-Prop.)	N/A	3	M3
L-14	M3 Off's Not Incl'd (Property Off's)	N/A	3	M3
L-14	Obstructing Administration of Law	18-5101	2	M2
L-14	Prostituting are Enumerates	18-5514	2	M2
L-14	POSSESSING INSTRUMENTS OF CRIME	18-907	1	M1
L-14	POSS. MARIJUANA IN DANG. DRUGS	Title 35	1	M1*
L-14	POSS. OF SYNTHETIC/NARCOTIC DRUGS	Title 35	1/3	M1*/M3*
L-14	Prohibited Offensive weapons	18-5906	1	M1
L-14	Promoting Prostitution	18-5902	M/3	F2
L-14	Propulsion of Missiles Onto Roadway	18-3707	2	M2
L-14	Prostitution	18-5902	3	M3
L-10	Perjury	18-4902	2	F3
L-14	RAPE	18-3121	1	F1
L-14	Reckless Endangerment	18-2705	2	M2
L-14	Removal/Falsi. of ID-Fraud. Intent	75-2102	2	M2
L-13	Resisting Arrest	18-5104	2	F3
L-14	Retail Theft (also M1,F2)	18-3929	N/A	M1/F2
L-14	Retail Theft (also M2,F3)	18-3929	N/A	M2/F3
L-10	Retail Theft (also M3,F3)	18-3929	N/A	M3/F3
L-10	Riot	18-5101	3	F3
L-10	Risking A Catastrophe (also F3)	18-3302	3	F3-2
L-14	Robbery (also F2,1)	18-3701	1	F1
L-14	Robbery (also F2,1)	18-3701	2	F2
L-15	ROBBERY (also F3,2)	18-3701	3	F2
L-10	Sale or Illegal Use of Solvents	18-4952	3	M3
L-10	SALE OF MARIJUANA FOR DANGEROUS DRUGS	Title 35	1	F1*
L-14	SALE OF NARCOTIC DRUGS	Title 35	1	F1*
L-14	Sale of Synthetic Drugs	Title 35	1	F1*
L-10	Sexual Abuse to Children	18-5512	2	M2
L-14	Sx. Ass.-Mutual Plantiples (M2)	18-3121	2	M2
L-10	SIM. ASS.-not Mut. Plant (also M3)	18-2701	3	M3
L-10	Solicitation to Commit Crime	18-902	3	F3
L-10	Susp. Pub. Records-Int. Corr/Picture	18-3312	3	F3
L-10	Tampering with Witness or Informant	18-4953	3	F3
L-14	Terroristic Threats	18-2706	3	M3
L-14	Theft (also M2,1,F3)	18-3921-30	3	M2
L-14	Theft (also M1,F2) (excess $ 3929)	18-3921-30	2	M1
L-14	Theft (also M2,1,F3) (excess $ 3929)	18-3921-30	3	M2
L-10	Theft (also M3,F3,1) (excess $ 3929)	18-3921-30	3	M3
L-10	Threats/Imp. Int. Off./Pol. Matters	18-4702	3	F3
L-5	Unknown Falsification to Authorities	18-4906-a&b-3	2	M3
L-13	Viols. As Fugit Instr. Act	35-780-115(a)(3)	2	M3*
L-13	VIOLATIONS OF UNIFORM FIREARMS ACT	18-6105-17	2	M1*
L-1	Voluntary Deviate Sexual Intercourse	18-3123	1	M1
L-10	Voluntary Manslaughter	18-2503	1	F2
L-10	Witness or Informant Intim Bribe	18-4952	2	F3

* These offenses are not probably they have been assigned experimental grades.

"typical" cases.[11] They do, however, retain the option of departing from these presumptive amounts (to make decisions "outside" of the guidelines) in unusual cases. If they do so, they are requested to note the reason for departure. Reasons which the Steering and Policy Committee thought would appear with some regularity and would be correct from a policy perspective are indicated at the bottom half of the judge's worksheet (Figure 1.1) in check-list format. (For information on the development of these reasons, see the report of the feasibility study.)

Evaluating Bail Guidelines: The Philadelphia Experiment

Although the findings of the feasibility study strongly suggested a constructive use for the guidelines approach in the area of bail and pretrial detention, it was argued that implementation of bail guidelines should be planned with a rigorous evaluation component built in. Our position was influenced by knowledge of many examples of promising reforms in criminal justice that were marketed in advance of sound research demonstrating their worth. Bail in particular, it was felt, has been an area in which examples of reforms based on good intentions had not been sufficiently evaluated before widespread implementation occurred. With the strong support of the Municipal Court of Philadelphia, the National Institute of Corrections and the National Institute of Justice, a random allocation experiment was designed to allow the impact of an implementation of bail guidelines to be carefully assessed.

The promise of bail guidelines was tied to four general concepts that guided their development and were of central interest in the Philadelphia experiment: visibility, rationality, equity, and effectiveness. Although these concepts are treated in some depth in the report of the feasibility study, we review them briefly here.

The guidelines approach seeks to make bail policy (and by extension pretrial detention policy) more visible, more "knowable" in a public sense. This implies that in a guidelines system, the rationale guiding bail decisions would take several steps away from the sub rosa world of total discretion and into the "sunlight." As a result, the guidelines approach should foster greater debate about bail policy and bail decisions more clearly focused around concrete policy issues.

By enhancing rationality in bail, the guidelines approach would seek not only to reduce irrationality where it exists, but to make bail decisions more related to the actual outcomes of concern: the use of pretrial detention, absconding and crime among defendants released before trial. Thus, the guidelines should move into a decisionmaking gulf where individual belief systems of the judges and improvisation have predominated in order to foster decisions in the court as a whole that are better aligned with the goals of the bail function and the criteria related to these goals.

A major part of the promise of guidelines lies in its potential for increasing the equity of bail and detention decisions. The ways in which bail practices have been characterized as inequitable have been well-outlined elsewhere (Foote, 1954; Freed and Wald, 1964; Goldfarb, 1967; Thomas, 1976; Goldkamp, 1979; Goldkamp, Gottfredson and Mitchell- Herzfeld, 1981). Included in this literature are questions about the discriminatory effects of cash bail, the arbitrariness of bail practices and allocation of pretrial detention, and the disadvantages suffered by detained defendants at later judicial decision stages. The guidelines approach proposes to reduce the considerable judicial disparity that exists in bail practices and to encourage more consistent decisions for "similarly situated" defendants. The enhancement of equity in bail decisions is a complex issue, but, as will be seen in subsequent chapters, one that lends itself to direct testing.

To the extent that guidelines provide a more rational policy framework for bail, then an additional expectation must be that bail practices should be more effective. Although the effectiveness of bail is also a complex issue, we adopt the view that maximally effective bail practices would foster pretrial release of the greatest numbers of defendants (thereby reserving pretrial detention for a highly selective use) while keeping FTA and rearrest rates to a bare minimum. Ineffective bail practices would crowd the jails needlessly by inappropriately detaining low-risk defendants and would generate high rates of failure among defendants who had gained pretrial release.

These broad and interrelated issues of visibility, rationality, equity, and effectiveness form the backdrop for the hypotheses we examine in the subsequent chapters. Four classes of questions related to these guidelines themes will be examined empirically: 1) questions relating to the extent of acceptance of the guidelines framework by court decisionmakers; 2) questions relating to the effects of guidelines on bail decisions; 3) questions relating to the impact of guidelines on pretrial release; and 4) questions relating to the impact of guidelines on pretrial detention. Our report on the results of the Philadelphia bail experiment concludes with an assessment of the strength and weaknesses of bail guidelines and discussions of their implications for the future of the bail function and the use of pretrial detention in the United States.

NOTES

CHAPTER ONE

[1]For readings documenting the long history of concern with bail practices and the use of pretrial detention in the United States, see, for example, Pound and Frankfurter (1922); Beeley (1927); Morse and Beattie (1932); Foote (1954); Alexander et al. (1958); Ares, Rankin and Sturz (1963); Freed and Wald (1964); Goldfarb (1967); Thomas (1976); Goldkamp (1979).

[2]After the enactment of the Federal Bail Reform Act of 1966 (18 U.S.C. §3146 et seq.), many states revised their bail laws to adopt similar approaches. See Goldkamp (1979) for a discussion of the bail laws in the United States.

[3]These states include Michigan, Nebraska, California, Colorado, Illinois, Florida, Arizona and Wisconsin.

[4]Proponents of the legitimacy of the "danger" or public safety function of bail and pretrial detention trace their position back to the decision of the United States Supreme Court in Carlson v. Landon in 1952 (342 U.S. 524, 545-546), which interestingly involved deportation, not a criminal proceeding. More recently the "danger" debate has surfaced in powerful form prior to as well as subsequent to the passage of the Federal Bail Reform Act (cf. 2). See ABA (1968), appendix. Hearings for consideration of the proposed preventive detention legislation for the District of Columbia which was enacted in 1970 also attest to the controversy surrounding the danger issue in bail at that time. See D.C. Code §23-1322 et seq. and Bases and McDonald (1972). See also ABA (1978; 1981), Attorney General's Task Force on Violent Crime (1981), NAPSA (1978).

[5]Proposition 8 passed by the voters of California in the summer of 1982 to amend the constitution of that state, as one example, has decreed that public safety "shall be the primary function" of bail. But see also the Attorney General's Task Force on Violent Crime (1981), ABA (1981).

[6]See Goldkamp (1979) for a review of the legal debate concerning the appropriate functions of bail and pretrial detention. See also the decision of the D.C. Court of Appeals in U.S. v. Edwards, 43 A. 2d 1321 (1981).

[7]There seemed to be two rationales for this policy stand: first, a frank recognition that judges were influenced by public safety concerns already in their bail decisions though in a sub rosa fashion, and second, because the Pennsylvania Rules of Court acknowledge a community protection-related concern--in a relatively obscure rule. See Rule 4003 (a)(3) wherein the judge is instructed to consider whether "the defendant poses no threat of immediate physical harm to himself or others" in weighing the suitability of ROR.

[8]For specific discussions related to bail, see, for example, Angel et al. (1971) and Goldkamp (1979).

[9]For an excellent discussion of the strengths and weaknesses of existing predictive capacity in decisionmaking, see Monahan (1981).

[10]See Commonwealth v. Davenport Pa., 370 A. 2d 301 (1977).

[11]By typical cases, we mean that the decisions suggested by the guidelines should be appropriate in a majority of cases. It should be noted that an ongoing debate occurred between researchers and judges concerning this concept. The judges at first held fast to the view that all cases were "unique" and therefore no patterns could be detected and no generalizations could possibly be made relating to judicial practices. The researchers took the social science perspective that by definition "all" cases could not be "unique" and that through multivariate methods they could detect patterns that characterized decisionmaking in a majority of cases.

Chapter Two

DESIGN AND IMPLEMENTATION OF THE GUIDELINES EXPERIMENT

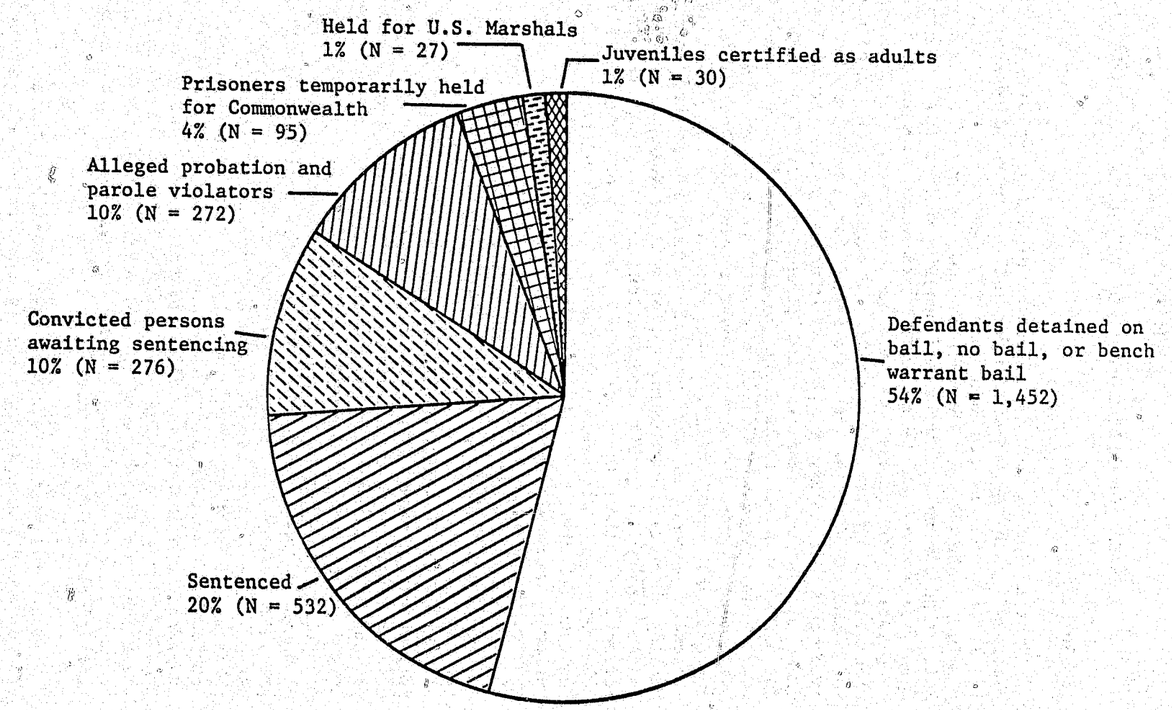
The Setting

The rationale for the selection of the study site was fully described in the report of the feasibility study (Goldkamp et al., 1981). Several factors were central, including the size of the criminal caseload in the Philadelphia courts, the fact that Philadelphia's bail process had benefitted from bail reform, the fact that data could be collected from various agencies relating to questions of interest as well as a judiciary that expressed a wish to participate in the study. It may be useful to point out, in addition, that as the prospects for conducting an actual experiment were being decided, two factors served to militate in favor of further research: the strong interest (in some cases, curiosity) of some of the judges of Philadelphia's Municipal Court in the possible advantages of a guidelines approach and a general background theme of serious overcrowding in the local urban correctional institutions.[1] Although we can report that the judges' interest in the project seemed always buffeted by a healthy skepticism concerning social science research methods, two issues compelled their cooperation in pursuing the project further: a) they were seriously interested in the findings relating to the performance of defendants during pretrial release and guarded the hope that guidelines might provide a tool for better dealing with defendant flight and crime; and b) they were genuinely concerned about the findings relating to disparity in the use of cash bail and appeared willing to consider results of an experiment that could address the equity issue.

There was in Philadelphia at that time a general belief that bail practices were, if not the sole responsible culprit, at least a major contributor to the highly strained state of affairs in the prisons. This impression was given credence, in fact, by the three judge panel that had been struggling with overcrowding litigation in Jackson v. Hendrick for more than a decade.[2] Although it was not uncommon to hear the Municipal Court judges proclaim that the situation at the detention facilities would never be a factor in their bail decisions, there was a more removed but sincere view that the overcrowding situation was intolerable. And, although they did not view jail capacity to be an appropriate concern in individual bail decisions, they did seem to find value in a review and possible reformation of bail practices that would allow them to feel that they had done their best to put bail decisionmaking (and, by extension, its impact on pretrial detention) in order.

That bail practices contributed heavily to the daily population of the Philadelphia prisons is undeniable. A cross sectional study of the population of the institutions (treated collectively as the urban detention facility) on a single day prior to the experiment (November 13, 1980) documents that, at least on that date,[3] more than half of all Philadelphia inmates were held on bail-related matters (see Figure 2.1).

Figure 2.1 Overview of population of Philadelphia prisons on a given day[a]



[a]On November 13, 1980, the population of Philadelphia prisons totalled 2,695 persons.

Selection of the Research Method

The objectives of the second phase of guidelines research in Philadelphia were straightforward: 1) to implement the guidelines approach developed during the feasibility study, and 2) to study the impact of guidelines on bail and detention practices. Assuming that bail guidelines could be successfully implemented, it was necessary to select an evaluation design that could shed the greatest light on the effects of guidelines decisionmaking in bail. Two methodological approaches were considered: a simple before and after (pre-test/post-test) design and an experimental design.

Clearly, the easiest design to carry out would have been the "pre-post" approach which would have involved comparison of two samples of bail data, one collected before the implementation of bail guidelines and one after. This approach would have been made even more simple due to the availability of the feasibility study data which could have been employed as the "before" measure of bail and detention practices. Under this design, the entire 22 judge Municipal Court would begin to employ guidelines for bail decisions on a certain date. Once guidelines had been in use for a given period, the "post-test" sample would be collected. Before and after samples would be contrasted and inferences would be drawn about differences detected in the use of bail and pretrial detention and the performance of defendants on release in the two samples.

Adoption of the before and after approach, however, would suffer from at least two major drawbacks: First, the Municipal Court would have to decide whether to move to bail guidelines in a full-scale implementation without knowing what their likely impact might be in advance. That is, the effects of guidelines would be measured only after the court was already committed to their use; it would be difficult to shift back away from their use later in the event of negative findings.

Experience with other reforms in criminal justice that began as "good ideas" but which were never properly tested called for great caution in this area. Second, and more importantly, using the pre-test/post-test approach, it might not be possible to conclude that changes from the "before" sample (T_1) to the "after" sample (T_2) were produced by the guidelines. Higher bail, higher rates of pretrial crime, lower or higher rates of pretrial detention could be the results of use of guidelines or could be artifacts of other factors--such as crime waves, overcrowding litigation, new mandatory sentencing laws, or media attention--all occurring between T_1 and T_2.

A more informative, but considerably more difficult approach to carry out would involve some form of an experimental design (Campbell and Stanley, 1963). Such designs offer means for holding the possible influence of intervening factors or events constant by making use of samples of data taken from the same moment in time. In the classic experiment, subjects (defendants

in this case) would be randomly allocated to either an experimental "treatment" group (guidelines bail) or a control group (nonguidelines or traditional bail practices). By comparing cases processed under the experimental and control approaches, it would be possible to draw inferences about differences between the two approaches and to explain such differences in terms of the presence or absence of the "treatment" bail approach. (An additional benefit of the experimental approach is that it would be still possible to produce before and after comparisons merely by comparing bail decisions and outcomes under the nonguidelines or control judges (T_2) with bail decisions and outcomes occurring at the time of the feasibility study (T_1).

The appeal of the experimental design is, of course, great. From a practical, operational point of view, implementing an experiment involving the earliest stages of the criminal process presents some rather serious problems. Setting aside legal and ethical questions relating to fairness,[4] the random allocation of defendants to treatments (i.e., the guidelines versus traditional bail approaches) poses a dilemma that at first would appear insurmountable--if a pre-condition of the study is not to exacerbate delay and other processing problems related to the arrest-to-bail stage.

Confounding our design difficulties is the fact that some of our hypotheses about guidelines relate to judges while others relate to cases. And, the nature of the treatment precluded a design that allowed the same judge to decide cases both under the guidelines and in the traditional manner. To do so, say by randomly allocating cases to guidelines or to traditional practices, might have permitted contamination of the control cases since the judges would necessarily be exposed to the treatment (guidelines). It was thus necessary to allocate judges into the treatment and control classifications. However, because judges work particular "shifts" and because the types of cases heard are not randomly distributed among shifts, it was also necessary to stratify along the dimension most critical to our analyses, charge seriousness. Thus, we created six charge strata and quota sampled within these strata. It is interesting to note that the choice of the experimental design over the simpler pre/post approach was made in part at the insistence of the President Judge of the Municipal Court who came to understand the methodological questions quite well and who believed that the experimental approach would yield greater knowledge.

The Data Collection Strategy

The data collection strategy, thus, was devised to generate two comparable groups of cases which differed only in the process by which the decisions were made. As a first step, it was necessary to select through random drawing judges who would be designated as guidelines judges and judges who would be studied while deciding bail in the normal fashion. Of the 22 judges

Figure 2.2 Design of the sample for the guidelines experiment

Guidelines (Experimentals)

Charge Seriousness	Judge 1	Judge 2	Judge 3	Judge 4	Judge 5	Judge 6	Judge 7	Judge 8	
Misdemeanor 3	20	20	20	20	20	20	20	20	160
Misdemeanor 2	20	20	20	20	20	20	20	20	160
Misdemeanor 1	20	20	20	20	20	20	20	20	160
Felony 3	20	20	20	20	20	20	20	20	160
Felony 2	20	20	20	20	20	20	20	20	160
Felony 1	20	20	20	20	20	20	20	20	160
	120	120	120	120	120	120	120	120	

Experimental Total
n= 960

Nonguidelines (Controls)

Charge Seriousness	Judge 9	Judge 10	Judge 11	Judge 12	Judge 13	Judge 14	Judge 15	Judge 16	
Misdemeanor 3	20	20	20	20	20	20	20	20	160
Misdemeanor 2	20	20	20	20	20	20	20	20	160
Misdemeanor 1	20	20	20	20	20	20	20	20	160
Felony 3	20	20	20	20	20	20	20	20	160
Felony 2	20	20	20	20	20	20	20	20	160
Felony 1	20	20	20	20	20	20	20	20	160
	120	120	120	120	120	120	120	120	

Control Total
n= 960

sitting on the Municipal Court bench, 8 were randomly chosen to be guidelines judges and 8 were randomly designated as "control" judges. (The number of judges involved--8x8--was determined through computation of the number of cases needed for the planned analyses, the length of time it would take to generate cases for each judge and budget constraints.)

Once judge groups (guidelines versus nonguidelines) had been designated, the data collection strategy followed the stratified approach previously undertaken in the feasibility study (see Goldkamp et al., 1981). Thus, each of the eight judges within each bail approach was represented by equal numbers of cases in each of 6 charge seriousness (misdemeanor/felony) categories.[5] Figure 2.2 portrays the data collection strategy adopted that relied on stratification on the basis of judge and charge. As a result of approximately 14 months of data collection (the experiment ran from early January, 1981 to early March, 1982), 960 cases were collected for each group, or a total of 1,920 cases in all. (The length of time required to complete the experiment highlights another difficulty in experimenting in applied settings.)

For each case included in the study, data were collected for well over 100 items relating to demographics, social background, criminal history, current charge, prior FTAs and rearrests, and bail decisions. (See Appendix A for a copy of the coding form and coding manual employed in the data collection.) In addition, a special effort was made to record follow-up data for cases processed under the guidelines or traditional bail procedures. Of special interest was the use of detention and the length of pretrial detention, as well as the performance (i.e., FTAs and rearrests) of those achieving release during a 90 day period beginning with the first day of pretrial release.

Exclusions

Cases not relevant to the policy questions addressed by the guidelines approach were excluded from this study, as they were in the feasibility study (see Goldkamp et al., 1981). These included cases of defendants charged with first degree murder or for whom bail was routinely denied at first appearance in Philadelphia, fugitive cases, private complaints, cases dismissed at first appearance, and "priority" bail cases.[6] Otherwise, the sample was taken from all criminal cases entering the process and continuing forward from first appearance during the 14 month period of the experiment.

It is important to note that, as a result of the study's design, proportions reported in subsequent chapters are estimates of the true values of attributes of the actual population of all defendants in given charge categories for each judge group and as such they are surrounded by a certain margin of error. Moreover, by the design employed, the figures reported in the study do not

represent estimates of the total population of Philadelphia defendants.

Implementing the Experimental Approach

Deciding upon and designing the experimental research approach to assessing the impact of bail guidelines was difficult enough, though perhaps satisfying on an academic level. Operationalizing the experiment in a large urban criminal justice system presented quite another set of challenges that were practical in nature. The principal dilemma was the fact that two bail approaches would be occurring simultaneously in one court system. Each of the approaches demanded different actions from participants in the normal bail process--not to mention different sets of paperwork.

The first task in attempting to move toward implementation of the experiment illustrated very well the distance between the theoretical niceties of research design and the pragmatic realities of bringing about change. It is one task to randomly allocate judges to experimental or control groups, it is quite another to discuss the imminent use of guidelines with the "volunteers." Nevertheless, the selection of judges was carried out by random drawing under the supervision of the President Judge of the Municipal Court. Several meetings with the judges thereafter designated as guidelines or experimental judges followed with the President Judge and the research staff to review the guidelines concept and to introduce the judges to the new procedures associated with the use of guidelines (e.g., the noting of reasons for decisions departing from the guidelines) and to explain the rationale for the experiment.

The group of judges recruited through random selection to use guidelines included a suitably diverse group, ranging in age from young to much older, varying from scholarly to more simply practical in their personal styles. They varied as well in the amount of enthusiasm they voiced concerning their participation in the experiment and the degree of cooperation they felt comfortable giving. As the judges took their turns in "trying out" the guidelines approach, the use of guidelines was reinforced through discussions with the President Judge and through conversations on site with the research staff. In general, the judges did their best, recognizing their different leanings in bail matters, to make constructive use of the guidelines format.

Yet, even with the cooperation of the guidelines draftees, two other participants in the bail process required preparation for important roles in the experiment. Perhaps the greatest work was required of the pretrial services interviewers whose job it was to prepare summaries of defendants' backgrounds for the judges presiding over bail proceedings. Normally, they interviewed defendants shortly after arrest and before preliminary arraignment (first appearance before a judge) to assess their community ties, prior records, prior histories of FTAs or rearrests and to recommend to the judge whether the defendant should be granted

ROR.[8] No recommendations were made under normal procedures concerning cash bail; in fact, such a practice would have run contrary to the philosophy of reform underlying the Vera-type ROR interview procedures practiced in Philadelphia at the time.

Under the bail guidelines, the pretrial services role was different. While they still provided a general descriptive summary for each defendant, they were now required to characterize each defendant along the guidelines dimensions. This meant that the interviewers now had to classify the defendant according to charge (levels 1 to 15) and according to risk (groups 1 to 5). The charge classification meant careful consideration of statutory ranking and selection of charges designated as "most serious" under the guidelines framework; the risk classification meant correctly assigning points to defendants according to attributes related to flight or rearrest, adding the points and placing defendants in risk categories defined by ranges of points.

Under the guidelines system, addition became important: erroneous classification under risk or charge severity would result in selection of the wrong guidelines range for the judge's bail decision. Most remarkably, pretrial services interviewers were required to complete the paperwork necessary for both approaches for all cases.

The court data clerks, who generally helped prepare paperwork for judges before and during bail sessions, were called upon as well to play an important role in the experiment. Because it was necessary to guarantee that guidelines judges would receive guidelines paperwork and that nonguidelines judges would receive the normal paperwork, the data clerks screened all paperwork associated with each case appearing before the judge, learned which judges were to receive the guidelines materials and which were not and, in short, prevented the materials from becoming mixed-up. Given frequent substitution of judges and delays causing defendants slated for a particular judge to have bail set by the judge on the next shift, the paperwork control function performed by the court data clerks was crucial, potentially of a nightmarish dimension in the minds of the research staff. Because they performed this screening function so thoroughly, the experimental procedures were rarely compromised and order reigned where chaos might instead have been predicted.

Finally, to supervise the integrity of the experimental strategy, the research staff had to monitor carefully (as unobtrusively as possible) the performance of all participants in the experiment for the full 14 month period: the use of guidelines by the newly conscripted experimental judges, the accuracy of the work of the pretrial services interviewers in preparing the guidelines forms, and the alertness of the court data clerks. This supervision effort required constant vigilance of judges' schedules (last minute substitutions among judges was not uncommon), random checking of all paperwork produced for and from the bail decisions, training and retraining of interviewers in the preparation of guidelines information for the judges, and

periodic visits on all shifts to observe first hand the functioning of the experimental procedures. In short, setting the experiment in motion in a way that would not doom the ability of the research to address the key questions in advance was at times an undertaking of rather substantial dimensions.

Characteristics of the Sample(s)

The aim of the random allocation, stratified sample design was to produce two comparable groups of cases--those processed by experimental/guidelines judges and those processed by control/nonguidelines judges--for whom bail decisions had been made. For the design to be successful, both groups should be comparable in all attributes except their membership in the guidelines or nonguidelines groups. That comparability was relatively successfully accomplished is suggested by comparison of the attributes of guidelines and nonguidelines defendants summarized in Table 2.1. In demographic, offense, prior criminal history and prior FTAs and rearrest categories, defendants in both groups resembled each other very closely.

Table 2.1 Selected attributes of sample defendants appearing before experimental and control judges in the Philadelphia Municipal Court between January, 1981 and March, 1982

Attribute	Guidelines defendants Number	Guidelines defendants Percent	Nonguidelines defendants Number	Nonguidelines defendants Percent
Demographics				
Age				
Total	957	100.0	960	100.0
20 and under	170	17.8	141	14.7
21-25	276	28.8	277	28.9
26-30	186	19.4	205	21.4
31-39	191	20.0	172	17.9
40 and over	134	14.0	165	17.2
Sex				
Total	960	100.0	960	100.0
Female	123	12.8	120	12.5
Male	837	87.2	840	87.5
Race				
Total	960	100.0	960	100.0
Black	641	66.8	631	65.7
White	275	28.6	273	28.4
Hispanic/other	34	4.6	56	5.9
Marital status				
Total	933	100.0	913	100.0
Single	585	62.7	550	60.2
Married	267	28.6	297	32.6
Separated	60	6.4	50	5.5
Divorced/widowed	21	2.3	16	1.7
Employment status				
Total	943	100.0	931	100.0
Not employed	560	59.4	538	57.8
Employed	341	36.2	360	38.7
Not in work force	42	4.4	33	3.5
On public assistance				
Total	924	100.0	909	100.0
No	700	75.8	665	73.2
Yes	224	24.2	244	26.8
Telephone				
Total	923	100.0	904	100.0
No	218	23.6	204	22.6
Yes	705	76.4	700	77.4
Living arrangements				
Total	931	100.0	906	100.0
Alone	101	10.8	98	10.8
Relative/friend	628	67.5	608	67.1
Spouse/child	202	21.7	200	22.1

Table 2.1 Selected attributes of sample defendants appearing before experimental and control judges in the Philadelphia Municipal Court between January, 1981 and March, 1982 (cont'd)

Attribute	Guidelines defendants Number	Guidelines defendants Percent	Nonguidelines defendants Number	Nonguidelines defendants Percent
Current offense				
Offense against person				
Total	960	100.0	960	100.0
No	649	67.6	691	72.0
Yes	311	32.4	269	28.0
Charge severity				
Total	960	100.0	960	100.0
Level 1	23	2.4	51	5.3
Level 2	91	9.5	100	10.4
Level 3	6	.6	6	.6
Level 4	44	4.6	35	3.6
Level 5	34	3.5	31	3.2
Level 6	39	4.1	52	5.4
Level 7	53	5.5	52	5.4
Level 8	119	12.4	85	8.9
Level 9	21	2.2	36	3.7
Level 10	196	20.4	194	20.2
Level 11	31	3.2	28	2.9
Level 12	59	6.1	57	5.9
Level 13	108	11.2	95	9.9
Level 14	44	4.6	39	4.1
Level 15	92	9.6	99	10.3
Injury to victim				
Total	953	100.0	956	100.0
No injury	826	86.7	861	90.1
Minor injury	84	8.8	49	5.1
Serious injury	42	4.4	46	4.8
Death	1	.1	0	.0
Prior criminal history				
Prior FTAs				
Total	959	100.0	954	100.0
0	752	78.4	751	78.7
1	80	8.3	91	9.5
2 or more	127	13.3	112	11.8
Pending charges				
Total	959	100.0	957	100.0
0	782	81.5	749	78.3
1	125	13.0	147	15.4
2 or more	52	5.4	61	6.4
Prior arrests during last three years				
Total	960	100.0	960	100.0
0	492	51.3	482	50.2
1	198	20.6	187	19.5
2 or more	270	28.1	291	30.3

Table 2.1 Selected attributes of sample defendants appearing before experimental and control judges in the Philadelphia Municipal Court between January, 1981 and March, 1982 (cont'd)

Attribute	Guidelines defendants Number	Guidelines defendants Percent	Nonguidelines defendants Number	Nonguidelines defendants Percent
Current offense				
Offense against person				
Total	960	100.0	960	100.0
0	624	65.0	646	67.3
1	178	18.5	173	18.0
2 or more	158	16.5	141	14.7
Prior serious property offense arrests				
Total	960	100.0	960	100.0
0	721	75.1	728	75.8
1	122	12.7	131	13.7
2 or more	117	12.2	101	10.5
Prior drug arrests				
Total	960	100.0	960	100.0
0	735	76.7	750	78.1
1	113	11.8	120	12.5
2 or more	111	11.5	90	9.4
Prior weapons arrests				
Total	960	100.0	960	100.0
0	108	73.7	720	75.0
1	143	14.9	150	15.6
2 or more	109	11.4	90	9.4
Prior convictions				
Total	960	100.0	960	100.0
0	603	62.8	630	65.6
1	132	13.8	127	13.2
2 or more	225	23.4	203	21.2
Prior felony convictions				
Total	960	100.0	960	100.0
0	719	74.9	752	78.3
1	111	11.6	101	10.5
2 or more	130	13.5	107	11.2
Prior serious personal offense convictions				
Total	960	100.0	960	100.0
0	803	83.6	840	87.5
1	111	11.6	83	8.6
2 or more	46	4.8	37	3.9
Prior serious property offense convictions				
Total	960	100.0	960	100.0
0	838	87.3	858	89.4
1	79	8.2	66	6.9
2 or more	43	4.5	36	3.7

Table 2.1 Selected attributes of sample defendants appearing before experimental and control judges in the Philadelphia Municipal Court between January, 1981 and March, 1982 (cont'd)

Attribute	Guidelines defendants Number	Guidelines defendants Percent	Nonguidelines defendants Number	Nonguidelines defendants Percent
Prior criminal history (cont'd)				
Prior drug convictions offense arrests				
Total	960	100.0	960	100.0
0	885	92.2	898	93.5
1	49	5.1	42	4.4
2 or more	26	2.7	20	2.1
Prior weapons convictions				
Total	960	100.0	960	100.0
0	851	88.7	856	89.2
1	76	7.9	82	8.5
2 or more	33	3.4	22	2.3

NOTES

CHAPTER TWO

[1]The Philadelphia prisons consist of three separate institutions that collectively serve as the functional equivalent of the urban jail. Two of the institutions, Holmesburg Prison and the House of Correction, were built during the last century, although some modifications have been made more recently. The third institution, the Detention Center, was built in the mid-1960's in response to an overcrowding crisis. The institutions share similar functions and operate under one Superintendent. The authorized capacity for the institutions is approximately 2,200 inmates. Just prior to the experiment the population was around 2,700; toward the completion of the experiment the population had risen to approximately 3,700 inmates. For a summary of the recent, troubled history of the institutions, see the report of the feasibility study (Goldkamp et al., 1981).

[2]See Jackson v. Hendrick, Philadelphia Court of Common Pleas, No. 2437 (February, 1971).

[3]The study characterized the total population of the Philadelphia prisons on one day (November 13, 1980) to produce a cross-sectional analysis of the inmates of Philadelphia's urban "jail." The methodological rationale parallels that employed by LEAA and the U.S. Bureau of Census in their surveys of inmates of local jails in the United States and produces descriptive findings that can be interpreted as portraying the jail population "on a given" or "typical" day. See U.S. Department of Justice (1972; 1979); Goldkamp (1978).

[4]For a discussion of the issues involved in experimental research as applied to criminal justice processing, see, for example, Wood (1979).

[5]Cases within cells were selected by quota sampling: each case falling into a given category was taken until the totals for each cell had sufficient numbers. For a more detailed explanation of this methodology, see the discussion in Goldkamp, Gottfredson and Mitchell-Herzfeld (1981). Thus, although stratification controlled for the seriousness of criminal charges using six broad categories, it is conceivable that the offenses included within strata varied within judge groups. Randomization presumably minimized the possible differences within strata when comparing judge groups.

[6]These exclusions are the same employed in the feasibility study, see Goldkamp et al. (1981). "Priority" bail cases should be seen as a special area of concern because they represent defendants for whom pretrial services interviews are not conducted. Because "priorities" represent cases from whom police are taking statements, a state-wide rule requires them to be presented to a bail judge within 6 hours. Often, the police present these defendants within minutes of the 6-hour deadline and the judge is

forced to set bail with no other information on hand than the arrest information.

[7]To the best of our knowledge, it appeared that the characteristics of judges in both groups--experimental and control--were comparable, although we have no specific measures of their backgrounds, philosophies, etc.

[8]For a description of the procedures and paperwork involved in the pretrial services interview function at the time of the experiment, see Goldkamp (1979: 115-122).

Chapter Three

THE USE OF GUIDELINES IN MUNICIPAL COURT

Introduction

A fundamental objective of our experiment was to assess the use of guidelines by the randomly assigned judges and to chart the extent to which they found them to be useful and informative, to evaluate the degree to which they comprehended and found helpful the guidelines concepts (i.e., of charge severity, risk and decision ranges) and, quite importantly, the frequency with which they disagreed with the guidelines decisions. Although the guidelines were simple to use, their evolution was complex and not necessarily grasped by some of the judges who found themselves selected to initiate their use.

Before the experiment began, the "guidelines judges" met with the research staff as a group and then were visited individually to discuss the rationale behind the guidelines. The special features of their derivation (especially the fact that they were devised in part from study of the bail decisions of Municipal Court judges in the recent past in collaboration with the Steering and Policy Committee) and the simple mechanics of their use were explained. We explained, for example, that the charge severity measure defining one dimension of the decision grid was constructed after debate by the committee of Municipal Court judges about the appropriateness of the current charge criterion in bail decisions and after empirical study of how the charge standard was actually employed by the judges themselves (as opposed to a statutory charge classification scheme, for example).

Time was taken to discuss the meaning and purpose of the risk dimension, emphasizing that the factors computed to place defendants in one of five risk categories were determined through in-depth study of the pretrial misconduct of Philadelphia defendants, and that the classification according to risk, though useful, was meant to suggest a relative probability of failure and that there was a difference between probability and perfect prediction. In addition, the research staff discussed the differences between the guidelines information summarized by the pretrial services interviewers and the normal procedures designed to produce interviewer recommendations concerning defendants' suitability for ROR. Finally, questions about judicial discretion and the implications of the guidelines system were addressed, especially the notion that guidelines could bring about greater consistency in judicial practices without eliminating the flexibility required to take into account features of unusual cases.

Before proceeding with a discussion of some of the findings relating to the use of guidelines by the guidelines judges, it is important to stress the fact that the eight judges involved had been randomly selected and, thus, were not judges who had

volunteered for the experiment out of enthusiasm for the guidelines idea. The reactions of the conscripted judges to the experiment varied considerably. While all expressed a willingness to make use of the guidelines, the extent to which the notions were embraced by individual judges varied considerably. Certain judges thought there was considerable merit to the idea and expressed a desire to give it a try because "anything that could help" would be worth considering. Others were rather skeptical, showing little interest in the idea of defendant risk--as if mistrustful of anything ostensibly springing from statistics. Some even complained that soon bail could be decided entirely by a computer, as long as the computer could be programmed to follow the guidelines. Another reaction by judges--a common first impression--was that the guidelines indicated bail ranges that were too low. They pointed to the fact that the highest amount of bail suggested by the guidelines was only $10,000 and they thought this was unrealistic.

The research staff and the President Judge attempted to discuss each of these concerns--explaining, for example, that the previous research had demonstrated that bail was quite rarely set by Philadelphia judges in amounts over $10,000 (see Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981) and that higher bail certainly would be permitted and was to be expected under the guidelines as an occasional departure to be accompanied by reasons. As issues were raised by the guidelines judges, fears were to a greater or lesser extent addressed. Overall, the "pioneer" judges appeared to be willing to give the guidelines a try, but proceeded with caution. Even after the meetings and the visits to the judges at preliminary arraignment by the director of the research project, it was clear that some judges understood and accepted the guidelines framework quite well, some only partially understood its rationale but put forth effort to give them a trial run, and one or two either did not fully grasp features of the guidelines resource or did not view them as a significant tool or one that could compare with their subjective or intuitive approaches to bail.

The Use of Guidelines by the Selected Municipal Court Judges

To be successful in a practical sense by definition, the bail guidelines should foster judges' decisions that concur with the suggested ranges by the guidelines in a majority of the cases. Thus, the judges should have felt "comfortable" employing the suggested decisions in "most cases" while assigning bail options at odds with the specified ranges in unusual instances. One might posit, therefore, that the guidelines would have been either ill-designed or found to be of little use to the judges if their decisions did not fall within suggested guidelines ranges between 60 and 80 percent of the time.

Table 3.1 demonstrates that, as a group, decisions made by the guidelines judges agreed with the bail ranges specified by the guidelines in roughly three-fourths (76 percent) of all cases.

Table 3.1 Use of guidelines by the experimental judges[a]

	Total Decisions		Agreement of decision with guidelines: Within guidelines		Out of guidelines	
	Number	Percent	Number	Percent	Number	Percent
Guidelines judges						
Total	840	100.0	636	76.0	202	24.0
Judge 1	120	100.0	109	90.8	11	9.2
Judge 2	120	100.0	85	70.8	35	29.2
Judge 3	120	100.0	77	64.2	43	35.8
Judge 4	120	100.0	85	70.8	35	29.2
Judge 5	120	100.0	97	80.8	23	19.2
Judge 6	120	100.0	103	85.8	17	14.2
Judge 7	120	100.0	80	66.7	40	33.3

[a]The decisions made by Judge 8 of the experimental judges were excluded from the analysis after it was learned that he had misconstrued the guidelines procedures and had purposefully not consulted them. See footnote 1.

Thus, on the surface at least, it appears that judges were frequently "comfortable" with the guidelines and were able to concur with them in a substantial majority of the cases sampled. The same table lists the rate of agreement for individual judges with guidelines: agreement ranged from a high of 91 percent of the cases decided by Judge 1 to a low of 59 percent of the cases decided by Judge 8.[1]

A concern in the development of the guidelines for bail was that when taking exception to the suggested decision ranges judges would almost always decide departures using higher bail amounts and would fail to view "exception-taking" as a two dimensional process in which they could assign less restrictive as well as more restrictive bail. Table 3.2, however, reveals that departures were made by judges in both directions--though somewhat more frequently in the direction of more restrictive or higher bail. Roughly 56 percent of the departures made by guidelines judges were to assign bail higher than indicated by the guidelines; 44 percent were made to grant lower bail.

It is useful to examine more closely the occurrence of departures from the guidelines by using the three presumptive decision "zones" included in the decision grid. Guidelines decisions fall into one of three larger zones: the presumed ROR zone, the no presumption zone where decisions range from ROR to low cash bail amounts and the presumed cash zone. (See the guidelines grid displayed in Figure 1.1) Table 3.3 shows that the rate of departure or disagreement by the judges varied according to zone: guidelines judges made exceptional decisions 16 percent of the time for cases falling into the suggested ROR cells, 8 percent of the time for cases in the ROR/low cash zone and 35 percent of the time in the presumed cash range.

Looked at from another perspective, it can be seen that the distribution of exceptional cases among decision zones is not random. Although 36 percent of the cases decided by the guidelines judges fell into the presumed ROR zone, only 24 percent of guidelines departures occurred in that zone. Fifteen percent of the guidelines defendants fell into the second, ROR/low cash zone, but only 5 percent of the departures were generated there. Forty-nine percent of the guidelines cases fell within the cells comprising the suggested cash zone but 71 percent of the departures occurred among those defendants. In short, departures or exceptions to the guidelines occurred much less frequently than might have been predicted if they had been evenly distributed in the ROR and ROR/low cash zones but occurred disproportionately in the cash bail zone.

The finding that judges differ with decisions suggested by the guidelines in the higher cash zone should not be surprising, considering recent research that has shown that disparity in bail decisionmaking--differences between judges--is greatest in the use of cash bail: judges appear to agree with each other in assigning ROR to low risk defendants but may differ quite noticeably in

Table 3.2 Departures from guidelines among experimental judges[a]

Judge Group	Number	Percent
Total decisions	840	100.0
Within guidelines	636	75.7
Out of guidelines	204	24.3
Decision higher than guidelines	114	13.6
Decision lower than guidelines	90	10.7

[a]The cases decided by Judge 8 have been excluded from the analysis.

Table 3.3 Departures from guidelines among experimental judges, by guidelines decision zones[a]

Judge Group	Total Decisions		Guidelines decision zones					
			ROR zone		ROR-low cash zone		Cash zone	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Guidelines judges								
Total	840	100.0	302	100.0	126	100.0	412	100.0
Within guidelines	636	75.7	253	83.8	116	92.1	267	64.8
Out of guidelines	204	24.3	49	16.2	10	7.9	145	35.2

[a]The cases decided by Judge 8 have been excluded from the analysis.

their use of cash bail (Goldkamp, 1979; Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981). This is an important finding not only because it suggests that problems with equity in bail are associated with the use of cash bail but also because the pretrial detention that results from cash bail decisions, therefore, sometimes derives from disparate cash bail practices. (It is important to note, as a result, that if guidelines are designed to enhance equity for defendants in bail practices, they will by implication be required to foster greater consistency in judges' decisions precisely in the presumed cash bail zone. This will be examined more thoroughly in Chapter Five.) The fact that judges made exceptions in 35 percent of the cases falling under the cash zone categories serves to underscore the apparent tendency toward greater disagreement in the use of cash generally and raises an important point for subsequent investigation. More specifically, it would be important to learn whether 35 percent is higher or lower than what might be expected from judges deciding bail in the normal fashion. (We address this issue in Chapter Four.) Nevertheless, we may still point to the positive finding that even in the zone of likely greatest disagreement, the bail decisions of the experimental judges agreed with the bail guidelines in a majority of the cases.

Exceptions to the Guidelines and the Notation of Reasons

When the guidelines approach was introduced to the experimental judges, it was explained that a key part of guidelines decisionmaking was to note the reasons for departures from the decisions suggested by the guidelines. As has been noted in Chapter One and in the report of the feasibility study, asking judges to note reasons for their (exceptional) decisions represents a substantial departure from tradition. In fact, judges did express some sensitivity to the "reasons" feature of guidelines, perhaps believing that it represented in some respects an affront to the sanctity of judicial discretion. Yet, apparently because the judges understood that the recording of reasons would permit analysis of strengths and weaknesses of the guidelines later and because they viewed the guidelines as a court-sponsored project (rather than as a control imposed from the outside through legislation, for example), they did give reasons freely in most cases (i.e., 65 percent of the time).

Table 3.4 displays the frequency with which reasons were given by judges and the relative frequency of the kinds of reasons invoked when decisions were made outside of the guidelines ranges.[2] First, it is learned that, although judges provided reasons in the majority of cases in which they were departing from the guidelines, in 35 percent of all departures, reasons were not provided. When individual judges are considered, it becomes clear that some judges felt more inclined to note reasons than others: Judge 5 noted reasons in all but 9 percent of departure cases; Judge 4 provided reasons in all but 18 percent of the cases decided out of the guidelines; but Judge 3 and Judge 6 failed to

Table 3.4 Reasons noted for departures from guidelines (experimental judges)[a]

Reasons	Total[b]		Judge 1		Judge 2		Judge 3		Judge 4		Judge 5		Judge 6		Judge 7	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Total	197	100.0	11	100.0	35	100.0	43	100.0	34	100.0	23	100.0	17	100.0	34	100.0
1 High probability of dismissal	1	0.5							1	2.9						
2 High probability of conviction	8	4.1	1	9.1	2	5.7	1	2.3			3	13.0			1	2.9
3 Low probability of conviction	2	1.0	1	9.1											1	2.9
4 Defendant's physical or mental health	5	2.5					2	4.7	1	2.9	2	8.7				
5 Relationship to witness or victim	5	2.5	1	9.1			2	4.7							2	5.9
6 History of court appearances	19	9.6			7	20.0			5	14.7	3	13.0			4	11.8
7 Courtroom demeanor	9	4.6			2	5.7			4	11.8	3	13.0				
8 Sponsor present	8	4.1			1	2.9	4	9.3	2	5.9					1	2.9
9 To inform guardian	8	4.1									8	34.8				
10 Poses threat to witness or victim	2	1.0									2	8.7				
11 Outstanding warrants or detainers	1	.5							1	2.9						
12 Case involves multiple charges	7	3.6	3	27.3	1	2.9			1	2.9					2	5.9
13 Nature of charges	15	7.6			4	11.4	3	7.0	4	11.8					4	11.8
14 Prior criminal record	23	11.7	1	9.1	5	14.3	4	9.3	6	17.6			5	29.4	2	5.9
15 Requested by D.A.	1	.5			1	2.9										
16 Pending charges	1	.5													1	2.9
17 On probation	1	.5													1	2.9
18 Community ties	4	2.0					3	7.0					1	5.9		
19 Address unverified	2	1.0	1	9.1					1	2.9						
20 Age of defendant	3	1.5					2	4.7	1	2.9						
21 Non-resident	1	.5							1	2.9						
22 Miscellaneous	2	1.0					2	4.7								
23 Reason not listed	69	35.0	3	27.3	12	34.3	20	46.5	6	17.6	2	8.7	11	64.7	15	44.1

[a] Cases decided by Judge 8 were excluded from the analysis.

[b] Missing cases = 7.

note reasons in much larger proportions of their departing cases, at 47 and 65 percent, respectively.

A wide variety of reasons were called upon as rationales for decisions departing from the quidelines, but three reasons seemed to be invoked somewhat more frequently than others. Prior criminal record was cited in 12 percent of all departures for which reasons were provided; the nature of the current charges was invoked 8 percent of the time, and prior history of court appearances was employed as an exception-taking rationale 10 percent of the time reasons were noted. What is interesting about the reasons that were most frequently employed is that they are decision factors already built into the guidelines. If by the nature of the charges the judges meant the seriousness of the offense, one entire dimension defining the guidelines grid is based on charge severity. In addition, prior history of court appearances and prior criminal history (though in the form of prior record of arrests) both play influential roles in the risk dimension used as the other guidelines dimension.

In a well-designed and well-operating guidelines system, reasons invoked to assign decisions going beyond or below guidelines ranges would generally differ from the factors or concerns on which the decision ranges were based. Logically, unusual cases, by definition, would be decided using rationales not represented already in the guidelines framework, because the guidelines would have been designed to apply in "most" cases. Thus, one inference to be drawn from these findings is that judges may have understood the guidelines and their construction poorly in certain respects--or they would not have pointed to reasons already built in.

Another explanation, however, might be that judges understood the guidelines dimensions and their constituent factors quite well, but felt in certain cases that the guidelines did not go far enough or respond to particular themes strongly enough. For example, particularly heinous offenses might evoke an even more restrictive (higher) bail response from a judge than provided for in the guidelines. Or, unusually extensive records of convictions or of prior failure-to-appear in court might not, in the view of the judges, be given enough emphasis in the risk classification scheme. A defendant with 3 FTAs and a defendant with 20 FTAs, to cite another example, would earn the same penalty in classifying them according to risk, since the pretrial services interviewer preparing the form would only be checking to see if there were 2 or more prior FTAs.

In short, the notation of reasons for departing decisions can be viewed as moderately successful--although it would be important to learn of the reasons for the failure of judges to provide reasons in a minority of the exception-taking cases. Failure to provide reasons could signal disaffection with the use of guidelines, lack of time to complete the required information, or objection to the notation of reasons because they represented

encroachment on judicial discretion. Each of these explanations would carry significant implications for the ultimate success of a guidelines program. In addition, it would be informative to determine why various reasons were being employed and to discuss their use and appropriateness with the judges. The rationale for collecting reasons should not be lost: reasons provide an important tool with which the court may study and review its own bail practices.

NOTES

CHAPTER THREE

[1]After the guidelines data had been collected, a discussion with one judge, here represented as Judge 8, revealed that he had misunderstood the decision procedures and had mostly decided bail by not consulting the guidelines. In his words, after his decision, he would compare his natural decision with what would have been suggested by the guidelines. He would then mark off whether his decision had been a "departure" or not in effect reversing the correct procedure. Unfortunately, this misunderstanding had not been detected by the research staff in time to correct his procedures. Tables summarizing various analyses involving guidelines judges are therefore usually presented with Judge 8 excluded from calculations. The differences obtained by including and excluding Judge 8 are not marked. All tables reported in this report are available with the inclusion of Judge 8 from the authors on request.

[2]It is important to note that the "reasons" format on the judges decision form was designed after lengthy discussion with the Municipal Court judges who comprised the Judicial Steering and Policy Committee during the feasibility study. See the discussion of the rationale for requesting the notation of reasons in the report of the feasibility study (Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981). A glance at the guidelines decision form reveals a number of reasons which a judge can merely check off when a departure is occurring as well as an open-ended choice with space available for the judge to write in the reasons in his/her own words. It was discovered in reviewing the use of the "reasons" listing on the form that judges used pre-established reasons about half the time and gave written explanations about half the time. Table 3.4 lists all the reasons--pre-established (merely to be checked off) or open-ended--employed by judges when deciding to make bail decisions either higher or lower than suggested by the guidelines.

Chapter Four

GUIDELINES VERSUS NONGUIDELINES BAIL:

COMPARING BAIL DECISIONS

Introduction

Findings relating to the use of guidelines by the experimental judges described in Chapter Three may appear simple, but they are fundamentally important. The lack of utility of the guidelines approach could have been detected quite directly in that analysis, had the judges failed to employ guidelines in the manner outlined. The rate of disagreement with the decisions suggested by the guidelines or systematic failure to note reasons when decisions did depart from the guidelines for example, might provide strong evidence that guidelines were not workable in a bail application. Conversely, however, lack of negative findings relating to their use does not constitute a true assessment of the impact of guidelines on bail practices. Such an assessment can only come from comparative analysis of the bail decisions (and related consequences) of the experimental and control judges. This chapter begins that comparative analysis by contrasting bail decisions and the use of pretrial detention produced under the two bail approaches.

Based on the theory of guidelines that shaped their development during the feasibility study, we would hypothesize that in their general characteristics, guidelines bail decisions should not differ radically from "normal" or control bail decisions. That is, if the aim of the guidelines format--based partly on past decision practices and partly on a new actuarial dimension--was to bring order and consistency to bail discretion but not necessarily to alter radically bail practices, then in gross terms (e.g., percent with ROR, percent detained) the characteristics of the decisions of the experimental and control judges should not differ greatly. However, there should be notable differences in the kinds of cases receiving various bail dispositions, as well as differences in consistency between the experimental and control groups.

ROR, Cash Bail and Pretrial Detention: Surface Similarities

Table 4.1 summarizes the use of ROR, cash bail and pretrial detention when guidelines and nonguidelines decisions produced during the year-long experiment are compared. On the surface, at least, the two kinds of decision approaches do not appear noticeably different. Approximately 44 percent of the cases decided by the control judges (who set bail in the traditional fashion) received release on personal recognizance (ROR) or release on unsecured bail (SOB)[1]; 44 percent of the experimental defendants were also assigned ROR or unsecured bail. Conversely, both groups of judges resorted to money bail in similar proportions of cases. One difference, however, does emerge: with a

Table 4.1 Percent of defendants receiving ROR/SOB, median bail, percent detained, by judge group and by individual judges

Judge Group	Total Number	Total Percent	ROR/SOB Number	ROR/SOB Percent	With Cash Percent	Md $[b]	Detained Number	Detained Percent
Decision Characteristics								
Guidelines (Experimental)								
Total[a]	840	100.0	377	44.3	55.7	1,500	271	27.0
Judge 1	120	100.0	46	38.3	61.7	1,050	35	25.8
2	120	100.0	57	47.5	51.7	2,800	45	25.8
3	120	100.0	73	60.8	37.5	1,000	38	24.4
4	120	100.0	43	35.8	62.5	1,950	44	32.5
5	120	100.0	50	41.7	57.5	2,000	38	26.7
6	120	100.0	51	42.5	57.5	850	40	30.8
7	120	100.0	52	43.3	57.5	1,000	31	23.3
Nonguidelines (Control)								
Total	960	100.0	421	43.9	56.1	2,000	263	27.4
Judge 9	120	100.0	60	50.0	50.0	2,500	36	30.0
10	120	100.0	40	33.3	66.7	1,100	31	25.8
11	120	100.0	33	27.5	72.5	2,450	48	40.0
12	120	100.0	57	47.5	52.5	2,000	25	20.8
13	120	100.0	38	31.7	68.3	1,000	32	27.7
14	120	100.0	57	47.5	52.5	1,950	28	23.3
15	120	100.0	74	61.7	38.3	2,550	29	24.2
16	120	100.0	62	51.7	48.3	3,250	34	28.3

[a] Cases decided by Judge 8 have been excluded from the analysis.

[b] Median bail designates medians for cases with cash bail set (excluding ROR and SOB). Medians were rounded to the nearest $50.

median bail of $2,000, nonguidelines or control judges appear to have set higher bail in cash cases than guidelines judges who showed a median bail of $1,500.[2]

Interestingly, lower cash bails among guidelines defendants did not translate into a lower resulting use of pretrial detention: approximately 27 percent of defendants in both bail groups were detained (for longer than 1 day). Table 4.2 shows remarkably comparable rates and length of pretrial detention experienced by guidelines and nonguidelines defendants. Even the proportions of defendants detained who were never released prior to disposition of their cases (or at least within the 90-day study period) varied only very slightly: 14 percent of guidelines defendants compared with 16 percent of their nonguidelines counterparts were detained throughout their pretrial periods. (For the purposes of this and subsequent analysis, the pretrial period is defined as either 90 days after the initial bail decision if not released or 90 days after release if occurring before 90 days.)

In summary, then, in general terms--in the use of ROR, cash bail and pretrial detention--these findings demonstrate rough comparability between the decisions produced under bail guidelines and those made in the traditional fashion. This, of course, is not unexpected, given the heavy emphasis on past practice in the construction of the guidelines. However, it should be expected that changes have occurred with respect to the types of cases falling into these broad categories. Such differences are found and are summarized in the next sections.

Differences in the Relationship between Bail and Pretrial Detention under the Experimental and Control Approaches

An important difference between the two bail approaches is found when the relationship between bail decisions and the resulting use of pretrial detention is examined. Table 4.3 displays the bail ranges associated with released and detained defendants under the guidelines and nonguidelines approaches.

When defendants released under the two approaches are examined first, it is learned that the bails associated with their pretrial release are quite similar: Roughly 60 percent of both groups of released defendants had gained release through ROR or unsecured bail; 12 percent of control and 13 percent of experimental releases had bails set between $80 and (not including) $1,000; roughly 10 percent of both groups had gained release on $1,000 bail; roughly 16 percent of both groups were released on bails of more than $1,000 but less than $10,000; and a very small proportion of each group (less than 1 percent of experimental and 2 percent of control defendants) were released after paying $10,000 bail or more. In short, the bail profile of released defendants under each approach is nearly identical.

Table 4.2 Length of detention among sample defendants, by judge group and by individual judges

Judge Group	Total		Length of Detention: Released within 24 hours		Released within 2-14 days		Released within 15-30 days		Released within 31-90 days		Not released within 90 days	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Guidelines (Experimental)												
Total[a]	840	100.0	613	73.0	72	8.6	13	1.5	26	3.1	116	13.8
Judge 1	120	100.0	89	74.2	13	10.8	1	.8	3	2.5	14	11.7
2	120	100.0	89	74.2	6	5.0	2	1.7	3	2.5	0	16.7
3	120	100.0	91	75.8	11	9.2	2	1.7	3	2.5	13	10.8
4	120	100.0	81	67.5	14	11.7	3	2.5	3	2.5	19	15.8
5	120	100.0	88	73.3	6	5.0	3	2.5	7	5.8	16	13.3
6	120	100.0	83	69.2	10	8.3	2	1.7	7	8.8	18	15.0
7	120	100.0	92	76.7	12	10.0	0	0.0	0	0.0	16	13.3
Nonguidelines (Control)												
Total	960	100.0	697	72.6	68	7.1	17	1.8	28	2.9	150	15.6
Judge 9	120	100.0	84	70.0	16	13.3	4	3.3	2	1.7	14	11.7
10	120	100.0	89	74.2	9	7.5	2	1.7	3	2.5	17	14.2
11	120	100.0	72	60.0	10	8.3	1	.8	6	5.0	31	25.8
12	120	100.0	95	79.2	7	5.8	0	0.0	3	2.5	15	12.5
13	120	100.0	88	73.3	7	5.8	4	3.3	4	3.3	17	14.2
14	120	100.0	92	76.7	7	5.8	1	.8	1	.8	19	15.8
15	120	100.0	91	75.8	9	7.5	1	.8	1	.8	18	15.0
16	120	100.0	86	71.7	3	2.5	4	3.3	8	6.7	19	15.8

[a] Case decided by Judge 8 have been excluded from the analysis.

Table 4.3 The relationship between bail decisions and the determination of release or detention before trial, by judge group

Judge Group	Custody Status	Total		Bail decisions: ROR/SOB		$80-999		$1,000		$1,001-9,999		$10,000 or more	
		N	Percent	N	Percent	N	Percent	N	Percent	N	Percent	N	Percent
Experimental (Guidelines)[a]	Released	613	73	372	61	81	13	58	10	101	16	1	0
	Detained[b]	227	27	0	0	42	19	38	17	111	49	36	16
	Total	840	100	372	44	123	15	96	12	212	25	37	4
Control (Nonguidelines)	Released	697	73	421	60	83	12	68	10	111	16	14	2
	Detained[b]	263	27	0	0	29	11	28	11	116	44	90	34
	Total	960	100	421	44	112	12	96	10	227	24	104	11

[a]Cases decided by Judge 8 were excluded from the analysis.

[b]Detention in this analysis is defined as confinement for any period longer than 24 hours.

The striking difference between the approaches is found, however, when the amounts holding defendants (more than 1 day in pretrial detention) are examined. Simply, defendants detained under the control approach are held on much higher bails than defendants detained under the guidelines (experimental) approach: While 16 percent of the experimental detainees were held on bail of $10,000 or higher, more than twice that proportion (34 percent) of control detainees were held on bail that high. Approximatly 35 percent of experimental detainees were held on bail of $1,000 or less; only 22 percent of control detainees were held on bails that low.

These findings seem to suggest that, although overall both bail approaches release and detain similar proportions of defendants, control judges produce detention among their defendants by setting noticeably higher bails than experimental judges.

Differences between Bail Approaches Based on Criminal Charge

The finding of little difference overall between the bail decisions of each group of judges is also not maintained when classification of defendants according to the seriousness of their criminal charges is taken into consideration. Table 4.4 exhibits the general decision characteristics under each approach while taking the seriousness of the offenses with which defendants were charged (using the 6 category misdemeanor/felony statutory classification) into account. The patterns of ROR, cash bail and pretrial detention differ noticeably when guidelines and nonguidelines decisions are contrasted within charge categories.

For defendants charged with misdemeanors, guidelines judges used ROR and unsecured bail (SOB) noticeably more frequently as shown in Figure 4.1: for third degree misdemeanors (the least serious of all criminal charge categories) guidelines defendants received ROR or SOB 81 percent of the time compared to 73 percent of nonguidelines defendants; for second degree misdemeanors, 59 percent of guidelines defendants received ROR or SOB compared to 51 percent of nonguidelines defendants; for first degree misdemeanors, 69 percent of guidelines defendants received ROR or SOB in comparison with 57 percent of their nonguidelines counterparts.

For defendants charged with felonies, however, a different contrast emerges: guidelines defendants were assigned ROR or SOB less often than nonguidelines defendants. Nonguidelines defendants charged with third degree felonies received ROR or SOB 40 percent of the time, compared to 35 percent of guidelines defendants so charged. Nonguidelines judges assigned ROR or SOB to 30 percent of defendants charged with second degree felonies, compared to 18 percent of guidelines defendants charged in this class who were given ROR or SOB. Relatively few defendants charged with first degree felonies were granted ROR or SOB in either bail group, yet guidelines judges awarded ROR or SOB (in 2

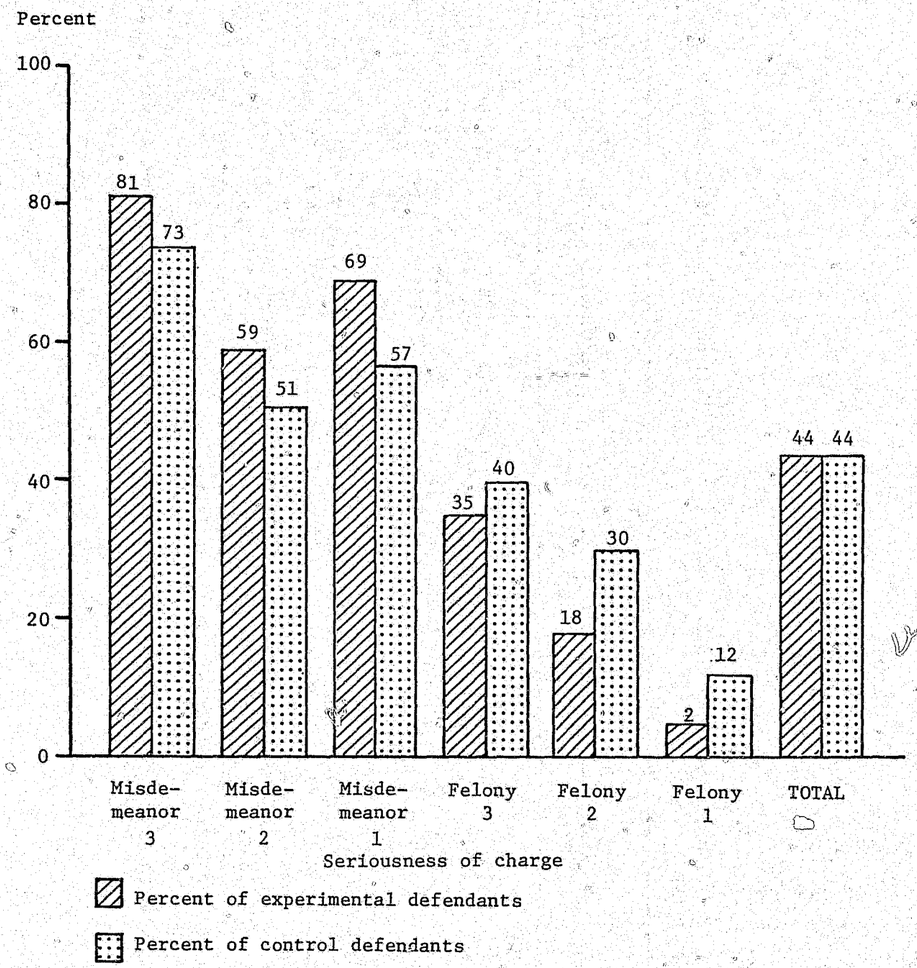
Table 4.4 Percent of defendants with ROR or SOB, cash bail, median bail and percent detained, by charge seriousness, by judge group

Judge Group	Total		Charge Seriousness: Misd-3		Misd-2		Misd-1		Felony-3		Felony-2		Felony-1	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Guidelines judges[a]														
Total	840	100.0	140	100.0	140	100.0	140	100.0	140	100.0	140	100.0	140	100.0
ROR/SOB	372	44.3	113	80.7	82	58.6	96	68.6	49	35.0	25	17.8	7	1.9
10% cash bail	468	55.7	27	19.3	58	41.4	44	31.4	91	65.0	115	82.1	133	98.1
Median bail[b]	$1,500		$900		$1,000		$1,000		$1,000		$1,950		$3,000	
Detained	227	27.0	13	2.1	18	12.9	17	12.1	50	35.7	55	39.3	84	60.0
Nonguidelines judges														
Total	960	100.0	160	100.0	160	100.0	160	100.0	160	100.0	160	100.0	160	100.0
ROR/SOB	421	43.9	117	73.1	82	51.2	91	56.9	64	40.0	48	30.0	19	11.9
10% cash bail	538	56.0	43	26.9	77	48.7	69	43.1	96	60.0	112	70.0	141	88.1
Median bail[b]	$2,000		$500		$1,000		$1,050		$1,500		$2,550		$5,050	
Detained	263	27.4	10	6.3	28	17.5	24	15.0	39	24.4	60	37.5	102	63.7

[a] Cases decided by Judge 8 have been excluded from the analysis.

[b] Median bail designates medians for cases with cash bail set (excluding ROR and SOB). Medians were rounded to the nearest $50.

Figure 4.1 Percent of defendants receiving ROR or unsecured bail, by seriousness of charge, by judge group



percent of the cases) less frequently than nonguidelines judges (who assigned ROR or SOB in 12 percent of felony 1 cases).

The types of cases for which cash bail was used by the two judge groups also reveals a sharp contrast, at least in the more serious charge categories. (See Figure 4.2.) Guidelines judges who used ROR more sparingly than nonguidelines judges among felony defendants are seen to have set lower bails than nonguidelines judges in those charge categories when they did resort to cash: the median bail assigned by guidelines judges for felony-three defendants was $1,000 compared to a $1,500 median by nonguidelines judges. The median bail for guidelines defendants charged with second degree felonies was approximately $2,000, compared with $2,600 for nonguidelines defendants. For felony-one defendants, the difference in median bails was even more striking: $3,000 for guidelines and $5,050 for nonguidelines defendants. (Note that bail in Philadelphia is set under a 10 percent program, under which defendants need pay only 10 percent of the given amount to be freed.)

The ROR and cash bail differences noted above translated into different uses of pretrial detention between bail approaches as well. (See Figure 4.3.) Guidelines judges detained smaller proportions than nonguidelines judges of defendants charged with the three grades of misdemeanors. They detained felony-three defendants at a substantially higher rate than nonguidelines judges (36 percent compared with 24 percent respectively).[4] Guidelines and nonguidelines defendants charged with second degree felonies were detained at similar rates (between 38 and 39 percent of both groups were held). Detention rates were roughly comparable between guidelines defendants (61 percent) and nonguidelines defendants (64 percent) in the first degree felony category.

Using the Guidelines "Zone" Classification for Purposes of Comparison

Another method for evaluating the degree to which the experimental and control approaches to bail produced different decisions within a framework of overall similarity is to make use of the guidelines format itself as a classification tool. Of course, the guidelines decision grid had no meaning for the control judges, because they had no exposure to it at the time of their decisionmaking. Nevertheless, it may be useful to categorize nonguidelines defendants using guidelines categories "after the fact" so that guidelines and nonguidelines decisions can be contrasted using the perspective of the guidelines grid itself. In this way, we may evaluate the bail decisions under both Figure approaches using the policy embodied in the guidelines as the frame of reference.

In fact, this is a direct method, given random allocation, of answering the question of whether the guidelines brought about a

Figure 4.2 Median cash bail amounts (for non-ROR/SOB decisions), by seriousness of charge, by judge group

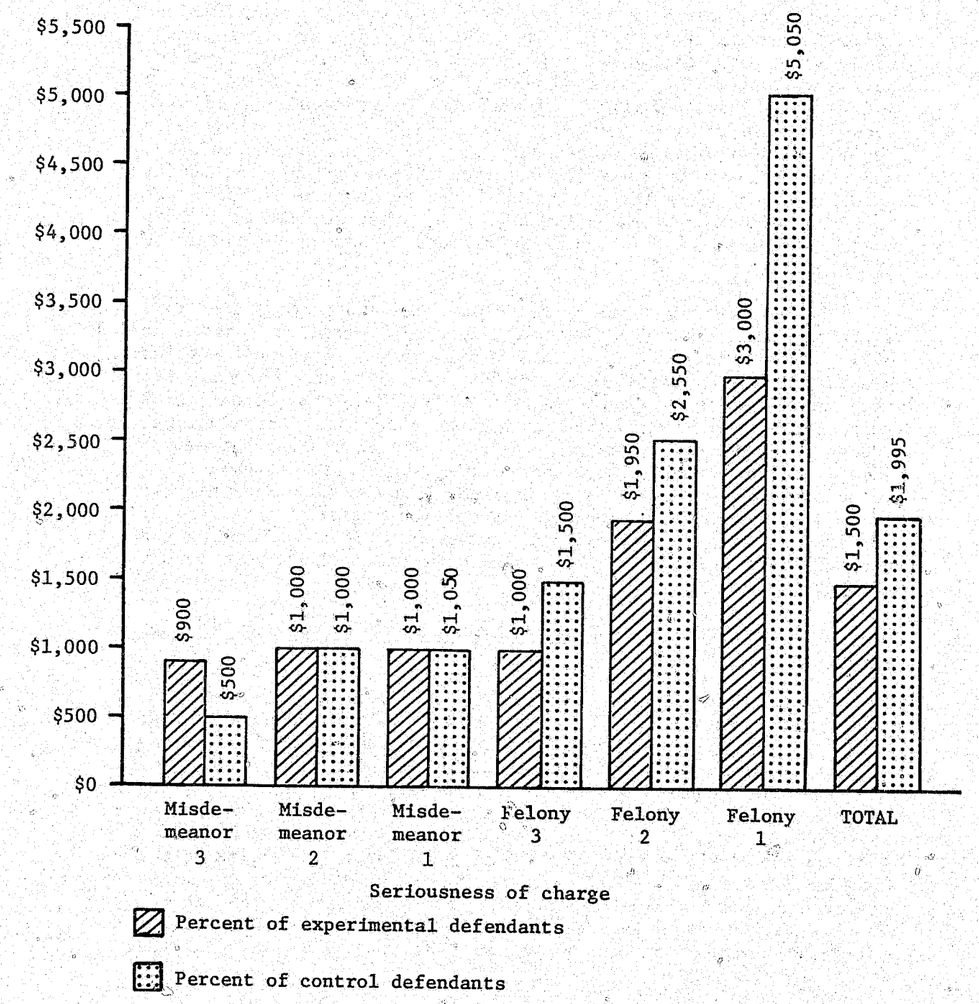
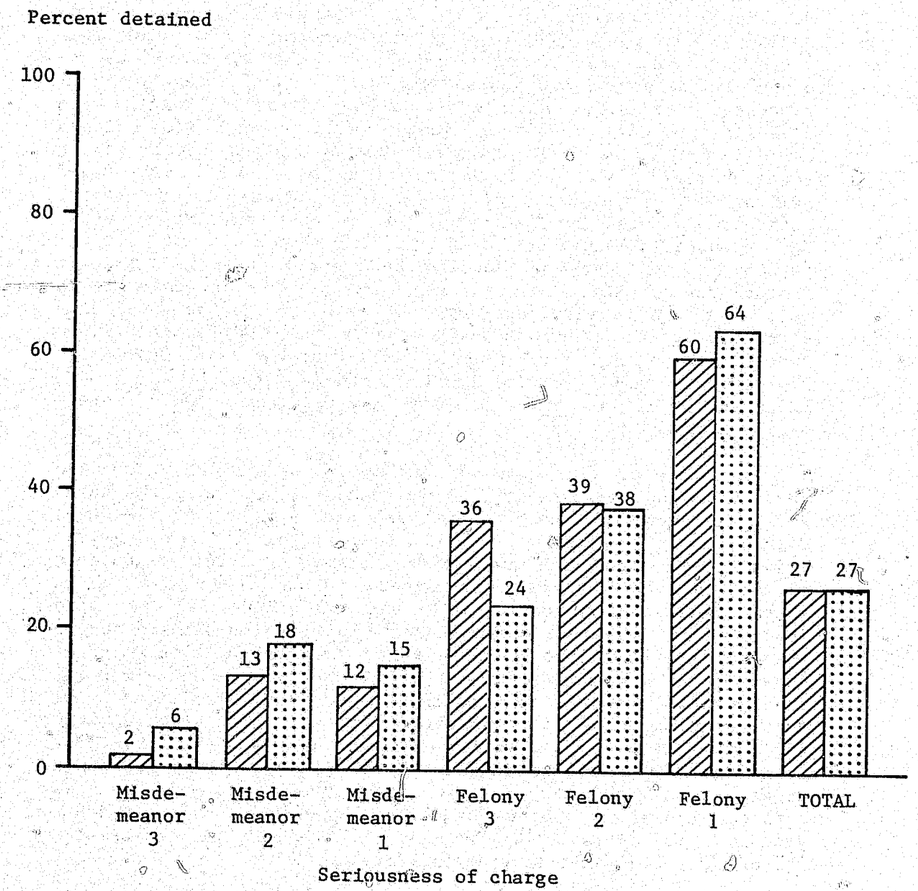


Figure 4.3 Percent of defendants detained (longer than 1 day), by seriousness of charge, by judge group



change in bail decisionmaking. Using the presumptive "zones" of the guidelines matrix in this fashion, we would hypothesize that noticeable differences would be evident in the bail decisions of the two judge groups. To find no such differences in the zone by zone analysis would strongly suggest that bail guidelines wielded little impact on the decision practices of the experimental judges.

In fact, our hypothesis is borne out: Table 4.5 indicates that guidelines-produced decisions do differ from "normal" decisions. For cases with characteristics placing them in cells included within the ROR zone of the decision grid, guidelines judges assigned ROR in approximately 84 percent of the cases; nonguidelines or control judges granted ROR less frequently, in 72 percent of the cases. Among cases falling within the ROR/low cash guidelines zone, guidelines judges and nonguidelines judges awarded ROR in comparable proportion (in 48 and 49 percent of the cases respectively). Differences are again evident among cases falling within the cash bail zone of the decision grid (which includes the most seriously charged, highest risk defendants): ROR was used in 14 percent of the guidelines cases compared to 21 percent of the cases decided by the control judges. Table 4.5 further reveals that cash bail decisions were lower generally in each zone among guidelines cases--especially in the cash zone where the median bail in non-ROR cases was $1,500 for guidelines judges but $2,500 for nonguidelines judges. Interestingly, however, the level of detention (for more than 1 day) among defendants did not vary by judge group within the different decision zones.

In summary, the apparent similarity of decisions between guidelines and nonguidelines judges when viewed in gross terms (e.g., percent ROR, median cash bail and percent of defendants detained) is altered upon more detailed examination. Guidelines-produced decisions differ notably when the seriousness of the charged offenses are concerned or when broken down by the zone classifications employed in the guidelines decision grid (based on charge severity and defendant risk). Guidelines judges appear to have employed ROR more freely than nonguidelines judges in cases of lesser seriousness and less liberally in cases of greater seriousness. In addition, cash bail decisions were systematically lower for guidelines judges, especially in more serious cases when they had shown a tendency to assign ROR less often than nonguidelines judges. These findings, finally, would suggest that although comparable rates of detention were noted between guidelines and nonguidelines defendants, the different decision practices may have translated into qualitative differences in the use of pretrial detention.

A Sharper Differentiation: Deviation from Decisions Suggested by the Guidelines

The guidelines framework may be used in another way to measure the extent to which bail decisions under the experimental

Table 4.5 Percent of defendants with ROR or SOB, cash bail (median) and percent detained, by guidelines decision zones, by judge group

Judge Group	Total		ROR zone		ROR-low cash zone		Cash zone	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Guidelines judges[a]								
Total	840	100.0	302	100.0	126	100.0	412	100.0
ROR/SOB	372	44.3	253	83.8	60	47.6	59	14.3
Median cash[b]	$1,500		$950		$950		$1,500	
Detained	227	27.0	9	3.0	25	19.8	193	46.8
Nonguidelines judges								
Total	960	100.0	352	100.0	144	100.0	464	100.0
ROR/SOB	421	43.9	252	71.6	71	49.3	98	21.1
Median cash[b]	$2,000		$1,000		$1,000		$2,500	
Detained	263	27.4	19	5.4	26	18.1	218	47.0

[a] Cases decided by Judge 8 have been excluded from the analysis.

[b] Medians bail designates medians for cases with cash bail set (excluding ROR and SOB). Medians were rounded to the nearest $50.

and control approaches differ. By building on the approach described in the previous section--by classifying control cases within the guidelines categories--it is possible to compare actual bail decisions made by the control judges as well as those made by the judges employing guidelines with the decisions suggested by the guidelines matrix. In the previous chapter, we reported that the decisions made by guidelines judges agreed with the suggested decision ranges in 76 percent of the cases. Although this appeared to live up to the requirement of the guidelines model that agreement should occur in a majority of the cases (the remainder constituting exceptions or departures), it was conceivable that the decisions made by the control judges without recourse to the guidelines would have "agreed" with the guidelines suggested-decisions at an equal rate. The rate of "agreement" with the guidelines can be an important analytic tool for helping not only to assess the ease with which a randomly selected group of judges was able to make use of the guidelines, but also to permit comparisons with the nonguidelines judges. Stated more simply, without comparing the rate at which nonguidelines decisions "would have departed" from guidelines had they been in use with the actual rate of exceptions recorded for the guidelines judges, it is difficult to be certain that use of the guidelines has brought about the desired changes.

At the beginning of this chapter, we stated that, to be successful, guidelines-produced decisions should resemble nonguidelines decisions in gross terms, but should differ from them in significant qualitative respects. In assessing the degree to which the decisions of the experimental and control judges deviated from the decisions suggested by the guidelines decision matrix, we would hypothesize that the decisions of the experimental judges would be noticeably more consistent with the suggested decisions than the decisions of the control judges. A showing of comparable rates of deviation from the decisions suggested by the guidelines would, of course, support the conclusion that guidelines have made little impact on the behavior of the experimental judges in deciding bail. Quite conceivably, a version of guidelines may have been constructed that was so "loose-fitting" as to provide little guidance or constraint for the experimental judges, thus achieving little modification of their practices.

The findings presented in Table 4.6 reveal a striking difference in the rate of deviation in the bail decisions of the two judge groups from the ranges posited by the guidelines matrix. As has been noted previously, guidelines judges conformed to guidelines suggestions 76 percent of the time. In contrast, the "normal" bail decisions produced by the control judges coincided with suggested guidelines decisions substantially less often, in only 57 percent of the cases. This difference of roughly 20 percent can be considered large enough to conclude that use of the guidelines did structure the bail decisions of the guidelines judges to the extent that they differed from the normal practices

Table 4.6 Departures from guidelines, by judge group

Judge Group	Number	Percent
Guidelines judges[a]		
Total	840	100.0
Within guidelines	636	76.0
Out of guidelines	204	24.0
Decision higher than guidelines	115	13.6
Decision lower than guidelines	89	10.6
Nonguidelines judges		
Total	960	100.0
Within guidelines	548	57.1
Out of guidelines	412	42.9
Decision higher than guidelines	281	29.3
Decision lower than guidelines	131	13.6

[a]Cases decided by Judge 8 have been excluded from the analysis.

CONTINUED

1 OF 3

represented by the control judges. Further evidence of differences in guidelines decisionmaking is seen when the directions of exception-taking (toward higher or lower bail than suggested by the guidelines) are contrasted. Departures among guidelines defendants were nearly equally divided between higher and lower (than guidelines) decisions--at a ratio of 1.3 to 1.0 (higher to lower exceptions). Nonguidelines decisions were more frequently in the direction of higher bail than lower, at a ratio of 2.2 to 1.0.

Table 4.7 extends the analysis of differences between guidelines and nonguidelines bail decisions using deviation from guidelines as a point of reference. In that table, relative agreement for each bail approach is examined by the presumptive zones of the decision grid. Guidelines judges demonstrate a consistently higher rate of agreement with the decision ranges suggested by the guidelines than nonguidelines judges in each of the zones. In the ROR zone, guidelines judges agreed with guidelines 84 percent of the time compared to the nonguidelines rate of 71 percent. In the low cash/ROR zone, they agreed 91 percent of the time, compared to the nonguidelines rate of 84 percent. But the major contrast is discovered in examination of the cash bail zone: guidelines judges made decisions coinciding with the suggested decisions 66 percent of the time; decisions made by the control judges coincided only 38 percent of the time.

It is important to note in passing an important implication of this last finding. According to guidelines theory, to be deemed useful decisions made by the users of guidelines should conform with those posited by the guidelines in a majority--hopefully, a substantial majority--of cases. The decisions of the experimental judges have done this, even in the cases where the recent literature (Goldkamp, 1979; Goldkamp et al., 1981) suggests that disparity will be the most pronounced: among high cash bail defendants. An important finding, then, is that in the region where the greatest need for guidance and constraint exists in bail decisionmaking, the guidelines have made, perhaps, their greatest contribution: the decisions of the experimental judges differ from those of the control judges in a major way, favoring the direction suggested by the guidelines decision matrix.

Table 4.7 Departures from guidelines, by guidelines decision zones, by judge group

Judge Group	Total		Guidelines decision zones: ROR zone		ROR-low cash zone		Cash zone	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Guidelines judges[a]								
Total	840	100.0	302	100.0	126	100.0	412	100.0
Within guidelines	636	75.8	253	83.8	116	92.1	267	64.8
Out of guidelines	204	24.2	49	16.2	10	7.9	145	35.2
Nonguidelines judges								
Total	960	100.0	352	100.0	144	100.0	464	100.0
Within guidelines	548	57.1	251	71.3	121	84.0	176	37.9
Out of guidelines	412	42.9	101	28.7	23	16.0	288	62.1

[a]Cases decided by Judge 8 were excluded from the analysis.

NOTES CHAPTER FOUR

[1]Unsecured bond, or "sign your own bail," allows a defendant to achieve immediate release on his/her signature with no requirement to post financial bail. "SOB" differs from ROR in that, theoretically, if an "SOB" defendant absconds and is apprehended later, he/she becomes liable for a given amount previously designated. For the purposes of most analysis, unsecured bail (SOB) is treated like ROR.

[2]Median bail amounts were calculated using the SPSS procedure which interpolates amounts automatically to arrive at an amount designating the 50th percentile. See SPSS (Nie et al., 1975).

[3]This classification is based on the statutory approach in effect at the time of the study and described in the report of the feasibility study (see Goldkamp et al., 1981). As a result of recent legislation, Pennsylvania has put into effect a new statutory classification scheme based on sentencing guidelines as of July, 1982, which supersedes the traditional misdemeanor 3-2-1, felony 3-2-1 classification described in Pennsylvania penal code (Pennsylvania Crimes Code and Criminal Law).

[4]It is interesting to note that this category was found in the feasibility study to include disproportionate numbers of defendants who absconded and who were rearrested during pretrial release. See Goldkamp et al., 1981:53.

[5]The reader will recall from discussions in Chapters One and Three that the guidelines decision grid or matrix places defendants in one of 75 possible categories ("cells") defined by the 15 category severity dimension and the 5 category risk dimension and including suggested decision ranges. Each of the 75 cells falls into one of three large presumptive decision zones: The 36 cells in the upper left portion of the decision matrix fall into the presumed ROR zone; 12 borderline cells form the "either ROR or low cash bail" zone; and the remaining 27 cells comprise the cash bail zone.

Chapter Five

THE IMPACT OF BAIL GUIDELINES ON EQUITY

Perhaps the most fundamental criticism of American bail practices has related to the issue of equity.[1] At the heart of the equity issue is the central role of cash bail in determining who among criminal defendants will be released before trial. Critics have long argued that a system that relies on a defendant's financial resources--or lack of them--to allocate pretrial liberty and confinement is economically discriminatory (Foote, 1954; Freed and Wald, 1964; Goldfarb, 1967). Other inequities associated with pretrial detention such as rupture of family ties and employment, physical privation and limited access to counsel, can be traced to the economics of bail. It has been suggested in addition that the economic disadvantage that contributes to a defendant's detention translates as well into a handicap in decisions made later in the judicial process.[2] Viewed from this perspective, the related reforms of ROR, deposit bail and conditional release were efforts designed to minimize the inequitable "side-effects" of cash bail by fostering release under nonfinancial conditions and by displacing the bondsman in the pretrial release process.[3]

Recent findings have spurred renewed concern about the equity of bail decisionmaking. Several studies (Goldkamp, 1977; 1979; Roth and Wice, 1978; Comptroller General of the United States, 1978; Goldkamp et al., 1981) have provided empirical support for early contentions by Beeley (1927) and Foote (1954) that bail decisions lacked consistency. Most critically, it has been learned that disparity--dissimilar treatment of "similarly situated" defendants--is most characteristic of the assignment of cash bail by judges (Goldkamp, 1977; 1979; Roth and Wice, 1978; Goldkamp et al., 1981). Because it is in the manipulation of cash bail that the detention "decision" is produced, the implications of this finding raise serious doubt about the equity of the use of pretrial detention.

In attempting to bring clarity to bail policy by providing a framework based on criteria that were both well-researched and well-debated by the judges, the guidelines were also constructed so that the equity of bail decisions--the comparable treatment at bail of like defendants--could be evaluated and enhanced. Although clearly the guidelines rationale did not call for the elimination of the use of cash bail--either in line with the recommendations of the NAPSA standards (NAPSA, 1978) or with the Canadian model (Solberg, 1977) which decides release or detention quite directly--it was built on the belief of the Municipal Court judges that a more equitable policy framework for bail was desirable.

The most difficult aspect of examining the relative equity of bail practices is in selection of an appropriate classification framework to organize the analysis. Assessments of equity cannot

be made without the use of categories that facilitate comparison of the bail decisions of defendants. One such classification might contrast the decisions given to rich versus poor defendants, although the affluent defendant would be such a rarity as to make such a comparison unlikely. Other classifications might be based on community ties or on the charge standard: the question being to determine whether defendants in given categories of community ties or criminal charge received roughly comparable treatment. More to the point, of course, would be comparison of the bail decisions for categories of defendants under the guidelines and nonguidelines bail approaches.

Although other approaches may have been possible, we have selected two classifications to frame our empirical analysis of the relative equity of guidelines produced by decisions: criminal charge (six categories of seriousness based on misdemeanor/felony grading) and the guidelines matrix itself. We have employed the simple categorization offered by the charge standard because of its traditional role in bail setting. The guidelines grid is employed because, in substantial part, the formulation of 75 "cells" based on the co-determinants of charge severity and risk was in effect intended as the definition of "similarly situated" at bail by the judges of the Municipal Court.

The following analysis examines the relative equity of decisions produced using the guidelines approach and those produced in the traditional fashion using these two classification schemes. We would hypothesize that, in order for the guidelines to be accomplishing their goal, the decisions of the experimental judges should be more consistent, should display less variability than the decisions made by the control judges. In effect, the aim of the analysis of the relative equity of guidelines-produced decisions is to ascertain whether "similarly situated" defendants were treated more "comparably" under guidelines than under the routine bail practices. Thus, the purpose of the analysis is not to gauge the similarity or differences in the level and kinds of bail decisions or use of pretrial detention between the two groups (the substance of Chapter 4), but is rather to compare the variability of bail decisions for given categories of defendants between bail approaches.

Comparing the Equity of the Bail Approaches on the Basis of the Charge Standard

Traditionally, defendants have been classified implicitly according to the relative seriousness of their criminal charges at bail; that is, not only has the charge standard been the principal determinant of bail decisions,[4] but it has served as the key conceptual dimension in discussions of equity in bail as well. In the following analysis, the charge standard--what might be termed the traditional definition of "similarly situated" is employed to assess the comparability of the treatment of defendants between the guidelines and nonguidelines bail approaches. In this initial analysis interquartile ranges are employed to contrast the

variability of bail decisions for given groups of defendants under the two bail approaches.

In a first analysis Table 5.1 summarizes the variability of bail decisions for guidelines and nonguidelines defendants using the measure of the seriousness of defendants' charges derived from the misdemeanor-felony statutory grading scheme in effect in Pennsylvania during the study.[5] This six category charge measure, used in stratification of the current sample and in the feasibility study,[6] groups equal numbers of defendants in 3 misdemeanor and 3 felony categories: charge seriousness level 1 corresponds to misdemeanor 3 charges, while charge seriousness level 6 corresponds to felony 1 charges, etc. The current analysis differs from discussions in earlier chapters in that the dependent variable--bail--is now defined as a scale ranging from $0 (for ROR and unsecured or SOB bail) to any dollar amount assigned by the judges. In the subsequent tables, a number of measures of variability are provided, however, due to the irregular and skewed distribution of the bail variable (see Appendix B) and for the sake of simplicity, medians and interquartile ranges employed.[7]

The findings presented in Table 5.1 not only highlight the differences in bail levels between the two approaches, but also indicate differences in the variability or spread of bail decisions for defendants within charge groups.[8] More to the point for the evaluation of the relative equity of the two approaches, however, is comparison of the variability of bail decisions around the median or midpoint bails for defendants in each charge category. If the experimental guidelines approach has effectuated greater consistency--and thus greater equity--in bail decisions, it can be hypothesized that a larger proportion of decisions for defendants within each charge category will cluster more tightly about the medians under guidelines than under the normal bail practices.

The interquartile range designates the "distance" between the bail values of the cases located at the 25th percentile and 75th percentile of the bail distribution within each category considered. (The median, of course, is the bail value held by the case in the middle or the 50th percentile.) Stated another way, it specifies the range within which the middle 50 percent of the cases fall. The interquartile range offers a useful statistic for discussion of equity because of the following logic:

a) if the range holding the middle 50 percent of bail decisions for guidelines defendants is equal to the range designating the middle 50 percent of nonguidelines decisions within a given category of defendants, then it maybe concluded that guidelines have not made bail decisions for "similarly situated" (categorized) defendants any more consistent than is normally the case;

Figure 5.1 Interquartile ranges surrounding median bail amounts, by seriousness of charge, by judge group

[Note: In this analysis, medians have been calculated by including ROR and unsecured bail (SOB) and assigning them $0 values.]

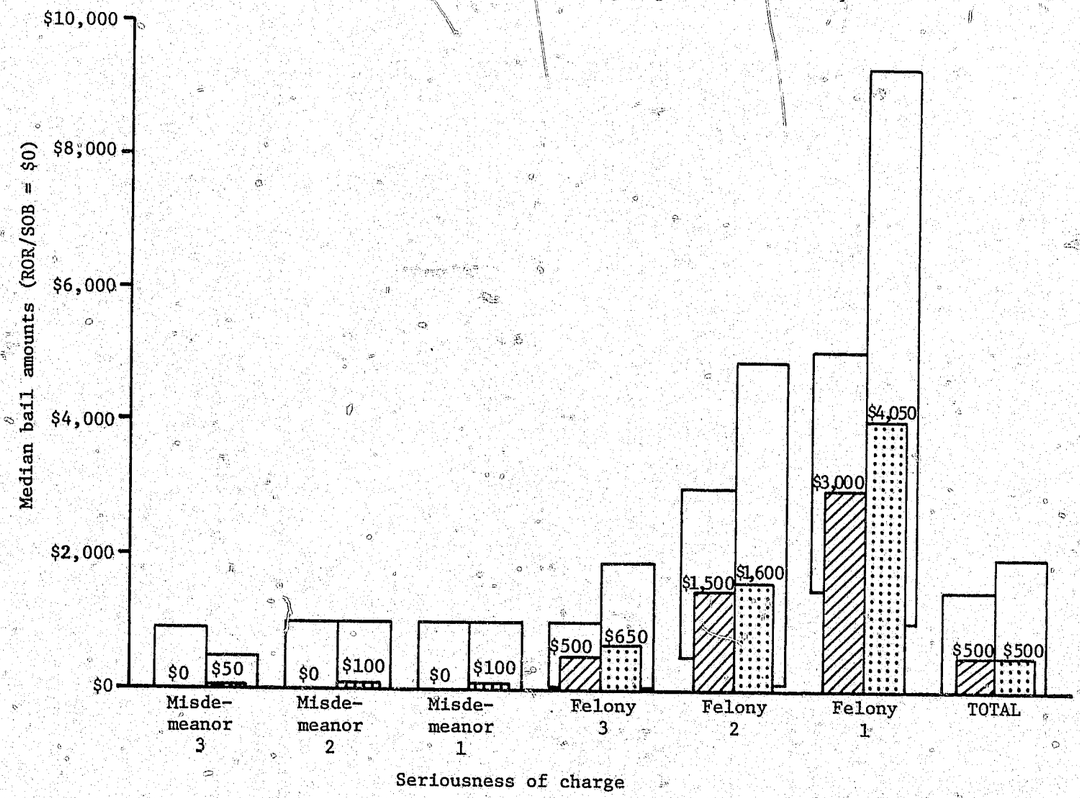


Table 5.1 Bail[a] assigned by Philadelphia judges, by seriousness level, by judge group

Judge Group	Number	Cash bail $\overline{X}$	s	$s/\overline{X}$	Skewness	Md.[c]	I.Q. range
Guidelines (experimental)[b]							
Seriousness level							
Total	840	$1,877	$ 5,604	2.99	9.63	$ 500	$1,500
1	140	224	687	3.06	5.25	0	900
2	140	515	1,145	2.22	5.19	0	1,000
3	140	783	4,300	5.49	10.97	0	1,000
4	140	1,085	2,598	2.39	6.62	500	950
5	140	4,104	10,454	2.54	6.58	1,500	2,500
6	140	4,553	5,883	1.29	4.38	3,000	3,650
Nonguidelines (control)							
Seriousness level							
Total	960	3,110	8,028	2.65	6.06	500	2,000
1	160	181	388	2.14	3.34	50	500
2	160	1,038	2,264	2.18	4.91	100	1,000
3	160	1,010	2,862	2.83	7.29	100	1,100
4	160	1,861	3,946	2.12	4.32	650	1,850
5	160	4,716	8,425	1.79	3.03	1,600	4,800
6	160	9,856	15,524	1.58	3.44	4,050	9,350

[a] In this measure of bail, ROR and SOB amounts have been given a $0 bail amount and thus are included in means, medians and derivative measures.

[b] Cases decided by Judge 8 are excluded from the analysis.

[c] Medians are rounded to the nearest $50.

b) if the interquartile range for guidelines decisions within a given defendant category is larger than the interquartile range for the nonguidelines counterparts, it may be concluded that, to the contrary, guidelines decisions are more variable and less consistent than normal bail practices;

c) if the middle 50 percent of guidelines decisions within a given defendant category fall within a noticeably narrower range than control bail decisions, it may be forcefully argued that the effect of guidelines has been to reduce the variability normally associated with bail decisions and to increase the equity of decisionmaking by making more defendants with like characteristics to receive bail decisions more like the average (the median) for a given category.

Overall, Table 5.1 and Figure 5.1 reveal that the decision given guidelines defendants were slightly more consistent than those received by nonguidelines defendants. This slight overall difference, however, masks substantial differences in certain categories. Examination of specific categories of charge reveals that the interquartile ranges for guidelines and nonguidelines defendants differed little within misdemeanor categories. But the differences are pronounced in the serious charge categories: In charge level 4 (felony 3s), the middle 50 percent of guidelines defendants received bail falling within a range of $950 (around the median) compared with a much wider range of $1,850 for nonguidelines defendants. In charge level 5 (felony 2s), the middle 50 percent of guidelines defendants received bails within a $2,500 range compared to a range of $4,800 for the middle 50 percent of nonguidelines defendants. In charge level 6, the difference is the most striking: the middle 50 percent of cash bails for guidelines defendants fall within a $3,650 range compared to a $9,350 range for nonguidelines defendants.

In short, bail decisions produced by the guidelines did differ from normal practices in variability or consistency. Even using the charge standard as the operational or traditional definition of "similarly situated," it is found that guidelines decisions are clustered more closely around a central value (the median) overall and specifically in felony categories than nonguidelines decisions. Thus, guidelines decisions appear to be more consistent and less disparate precisely in the realm where recent studies have found the greatest inconsistency in bail practices. In short, from the charge perspective, and using the interquartile range as the measure of equity, they appear to have promoted more equitable bail decisions among like defendants.[9]

Comparing the Equity of the Bail Approaches Using the Guidelines Framework

Table 5.2 and Figure 5.2 compare the variability of bail

Figure 5.2 Interquartile ranges surrounding median bail amounts, by guidelines presumptive decision zones, by judge group

[Note: In this analysis, medians have been calculated by including ROR and unsecured bail (SOB) and assigning them $0 values.]

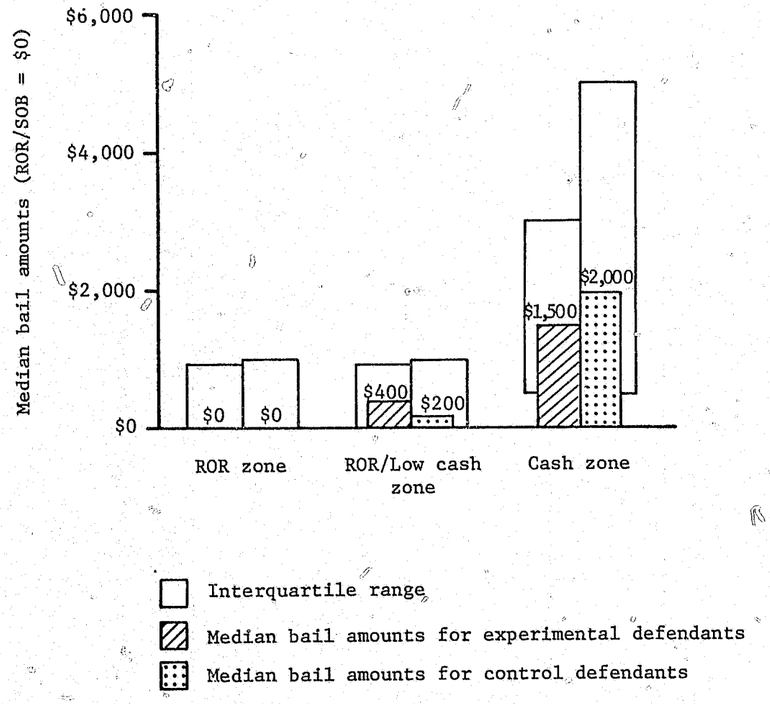


Table 5.2 Bail[a] assigned by Philadelphia judges, by judge group, by guidelines decision zone

Judge Group	Number	Cash bail $\overline{X}$	Cash bail s	Cash bail $s/\overline{X}$	Cash bail Skewness	Cash bail Md.	Cash bail I.Q. range
Guidelines (experimental)[b]							
Decision zone							
Total	840	$1,877	$ 5,604	2.99	9.63	$ 500	$1,500
ROR zone	302	203	653	3.22	5.01	0	950
ROR-low cash zone	126	1,079	4,620	4.28	9.78	400	950
Cash bail zone	412	3,349	7,272	2.17	7.71	1,500	2,500
Nonguidelines (control)							
Decision zone							
Total	960	3,110	8,228	2.65	6.06	500	2,000
ROR zone	352	542	2,021	3.73	8.48	0	1,000
ROR-low cash zone	144	1,050	2,775	2.64	6.00	200	1,000
Cash bail zone	464	5,698	11,032	1.94	4.47	2,000	4,550

[a] In this measure of bail, ROR and SOB amounts have been given a $0 bail amount.

[b] Cases decided by Judge 8 are excluded from the analysis.

decisions made under the guidelines and traditional bail approaches using the "zones" of the guidelines decision grid classifying defendants.[10] Thus, the questions addressed in this table are similar to those described above in the analysis of criminal charge: are similar defendants--here defined as falling into one of three presumptive decision zones--treated more consistently by guidelines judges than by the control judges?

The findings parallel those reported above when criminal charge was employed as the basis for classification. That is, in contrast with control decisions, the variability associated with experimental bail decisions appeared reduced in the area where the within-group variation (i.e., inconsistency) is known to be greatest:

The interquartile ranges for the decisions assigned by guidelines and nonguidelines judges were only slightly different within the presumed ROR and ROR/low cash zones (varying only between $950 for guidelines and $1,000 for nonguidelines defendants in each case)[11] but were substantial in the third zone. Guidelines defendants classified as falling in the presumed cash zone--that is, characterized as most seriously charged and as highest risk--exhibited an interquartile range of approximately $2,500 (around the $1,500 median). This contrasts sharply with the $4,550 interquartile range produced for similarly characterized nonguidelines defendants.

Equity Enhancement as the Reduction of Variance: An Analysis Based on Selected Guidelines Cells

Another direct way to compare the consistency of treatment of similarly categorized defendants under each of the bail approaches is to measure and contrast the variance of bail decisions. In this section, we employ the guidelines framework as a classification tool once more, this time focusing on selected categories or cells of defendants. If the guidelines approach was successful in fostering more equitable decisions, then we should find that, in comparison with the decisions of the control judges, the variance of the decisions of experimental judges should be noticeably smaller.[12] By definition, reduced variance among given cells of guidelines defendants would imply that the decisions of the guidelines-users were more consistent, more tightly clustered about the mean than the decisions of the control judges.

Table 5.3 presents data relating to the variance of bail decisions given guidelines and nonguidelines defendants overall, as well or for selected guidelines categories or cells.[13] Most important is the ratio that compares the relative magnitude of the variances of guidelines and nonguidelines decisions and notes whether the differences are statistically significant. The first major finding is that the variance among control decisions is more than two times the magnitude of the variance characterizing experimental decisions. Stated another way, the variability of

Table 5.3 Comparison of variance in bail decisions for selected "cells" of defendants, by judge

	Number	Mean[b]	Minimum	Maximum	Variance	Ratio	Significance[c]	Variance Reduced
Guidelines[a]								
Total	840	$1,877	$ 0	$100,000	$ 31,404,816	--	.000	yes
Cell 37	42	233	0	5,000	740,288	--	.000	yes
38	20	185	0	2,500	330,855	--	.000	yes
39	23	600	0	5,000	1,184,614	--	.000	yes
46	30	377	0	2,500	511,360	--	.000	yes
48	49	635	0	10,000	2,145,639	2.75	--	no
49	29	1,010	0	5,000	938,767	--	.000	yes
50	54	1,148	0	10,000	3,661.482	--	.000	yes
62	37	1,248	0	10,000	3,440,654	--	.000	yes
63	22	3,377	0	30,000	53,236,125	4.39	--	no
74	28	5,821	0	25,000	25,281,789	--	.000	yes
Nonguidelines								
Total	960	$3,110	$ 0	$100,000	$ 67,699,984	2.15	--	
Cell 37	20	912	0	10,000	5,839,955	7.89	--	
38	20	965	0	10,000	5,313,947	16.06	--	
39	23	1,191	0	10,000	5,244,558	4.43	--	
46	33	1,579	0	20,000	13,042,209	25.50	--	
48	54	539	0	5,000	777,924	--	.000	
49	39	861	0	10,000	2,794,246	2.97	--	
50	59	2,802	0	25,000	17,184,341	4.69	--	
62	24	3,416	0	50,000	102,123,150	29.68	--	
63	23	2,478	0	10,000	12,124,505	--	.000	
74	14	13,642	500	50,000	186,975,540	7.39	--	

[a]Cases decided by Judge 8 were excluded from the analysis.

[b]ROR and unsecured bail (SOB) were assigned the value $0 for this analysis.

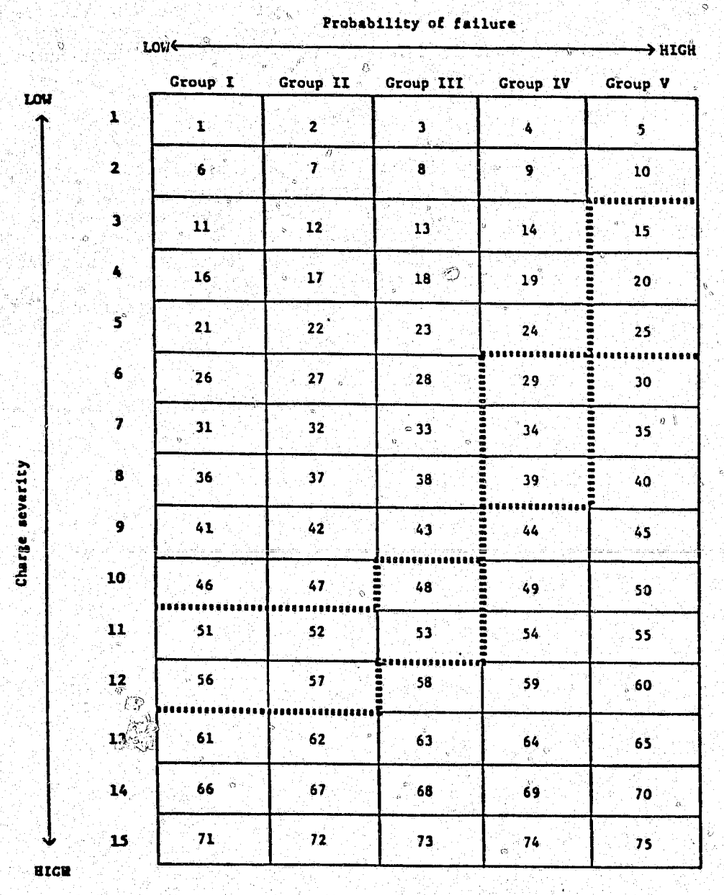
[c]As measured by the Barlett-Box F test for unequal n's.

bail decisions has been reduced in the cases decided under the guidelines approach by more than half.

The location of the selected cells within the bail guidelines can be determined by referring to Figure 1.1. A new version of that figure is presented here for convenience in Figure 5.3. Cells are counted from left to right beginning in the top row of the matrix. For example, cell 37 would be the cell second from the left in the eighth row of the matrix. That is, defendants with charges ranking them in severity level 8 and risk group 2 would fall into the 37th "cell". The variance of the bail decisions of experimental defendants with those characteristics was only 13 percent of the variance of control defendants with the same attributes. (The variance among nonguidelines defendants was more than 7 times as great.)

When the ten cells selected for adequate sample size are examined, Table 5.3 reveals that in 8 cells the variance of the bail decisions assigned by experimental judges was substantially reduced compared with that of nonguidelines judges. In two of the categories, cells 48 and 63, the variance among experimental bail decisions was not reduced and was, to the contrary, greater than the variance among the comparable control decisions. In short, we can safely say that variability appears to have been systematically reduced under the guidelines or experimental bail format.

Figure 5.3. The guidelines decision matrix with numbered cells



NOTES

CHAPTER FIVE

[1]See, for example, Beeley (1927); Foote (1954; 1965); Ares, Rankin and Sturz (1963); Freed and Wald (1964); and Single (1972).

[2]See, for example, Morse and Beattie (1932); Foote (1954); Alexander et al. (1958); Ares et al. (1963); Attorney General's Committee on Poverty and Federal Criminal Justice (1963); Rankin (1964); Single (1972); Brockett (1973); Landes (1974); Goldkamp (1979).

[3]For a general review of equity-related issues relating to bail and pretrial detention, see Goldkamp (1979; 1980).

[4]The appropriateness of the charge standard, of course, has been widely debated over the last several decades. Critics of traditional bail practices have argued that bail set largely in line with the charged offense has little bearing on the likelihood that a defendant will appear at trial (Beeley (1927); Foote (1954); Freed and Wald (1964)) and that other criteria are more appropriate in assessing defendant risk, such as community ties. Conventional judicial wisdom, on the other hand, has typically argued that the charge standard is appropriate because the greater the seriousness of an alleged offense, the greater the probable penalty upon conviction and the greater the incentive to flee to avoid the penalties. The survival of the old bail "schedule" attests to the prevalence of the conventional wisdom that knowledge of a defendant's alleged offense was nearly all that was required to determine bail and to differentiate among defendants. Recent predictive analyses of FTA and rearrest have shown that the charge standard may not be the powerful predictor that judges have assumed (and may, in fact, predict in an opposite direction than the conventional wisdom), but may be just as powerful as other presumed predictors (such as community ties), if not more so (Roth and Wice, 1978; Goldkamp, 1979; Goldkamp et al., 1981).

[5]See Appendix B and G of the feasibility study (Goldkamp et al., 1981).

[6]This measure of the severity of the charged offenses is discussed in the report of the feasibility study (Goldkamp et al., 1981: Appendix B). It was employed as a criterion for stratification in both the feasibility and the experimental studies conducted by the Bail Decisionmaking Project.

[7]See Appendix E of the report feasibility study (Goldkamp et al., 1981) for a discussion of the bail distribution.

[8]For this analysis, the comparison is between nonguidelines defendants and guidelines defendants excluding cases decided by Judge 8, because of questions about the extent to which that judge was able to employ the guidelines during the experiment.

[9]It should be noted, however, that guidelines decisions are characterized by greater skew.

[10]Zones are used here for the sake of simplicity. Analysis comparing variance in selected cells of guidelines is undertaken in the succeeding section.

[11]This may be partially explained by the limited range of decisions in these categories due to the predominant use of ROR or $0. Bus, see footnote 12 which shows that, using variance reduction, variability was reduced within the ROR and cash zones among experimental decisions but not within the low-cash/ROR zone.

[12]The variance is simply the square of the standard deviation(s), defined as $s^2 = \frac{(X_i - \overline{X})^2}{N}$ and is a measure of the spread or variability of values (in this case of cash bail) around the mean value. Although these data are not presented in tabular form, given the analysis presented in Table 5.3, the variance in bail decisions by "presumptive" guidelines zone was also contrasted between guidelines and nonguidelines judges. The variance among ROR zone decisions was 9.58 times as great for control decisions as for experimental decisions. Among the low cash-ROR zone decisions, in contrast, variance was 2.77 times as great under experimental decisions than under control decisions. Within the cash bail zone, however, the variance among control decisions was more than twice (2.30 times) that among experimental decisions.

[13]This analysis employs the strategy of selected cells principally because the numbers of defendants falling within each of the 75 cells for each judge group were not necessarily sufficient for the purposes of comparison. Thus, only the 10 most populous cells have been included in this analysis, those containing the most common classes of defendants.

Chapter Six

BAIL GUIDELINES AS A MECHANISM FOR IMPROVING THE RATIONALITY OF BAIL DECISIONMAKING

An important aspect of the development of bail guidelines during the feasibility study can be understood using the perspective of rationality (Gottfredson and Gottfredson, 1980; Goldkamp et al., 1981). For a decision process to be "rational" in the sense we employ the term, the criteria relied upon in making the decisions should be logically and/or empirically related to the outcomes of concern. During the feasibility study, therefore, a major task was not only to analyze the factors most influential in the judges bail decisions, but also to examine their relationships with flight and crime among defendants released pending trial. A surprising finding in that stage of the research was the extent to which the factors apparently guiding the bail decisions of the judges of the Municipal Court bore little empirical relationship to the prediction of FTAs (failures-to-appear) and pretrial crime (rearrests of defendants on pretrial release).[1] In devising a revised format for bail decisionmaking that incorporated the dimensions of charge severity and defendant risk, the Judicial Steering and Policy Committee was in an important sense, acting to improve the rationality of the bail process by agreeing on explicit criteria that generally should guide bail.

A test of the "rationality" aspect of guidelines might be formulated in two ways: First, we would hypothesize that the decisions of the experimental judges should have been more greatly influenced by the criteria espoused by guidelines, charge severity and risk. Second, it would follow that, because the experimental judges would have been influenced by an actuarial dimension (the risk classification dimension of the guidelines matrix) not available to the control judges, they should have been better able to predict potential absconders or pretrial "recidivists." Stated another way, the bail decisions of the experimental judges should be more effective in result (FTAs, rearrests) than those of the control judges who decided bail in the normal fashion. Given the extent to which the decision practices of the experimental judges had been modified (according to the findings described in Chapters Three and Four), we would at least argue that guidelines bail should be no less effective than normal procedures.

The Relative Influence of the Guidelines Criteria: Charge Severity and Risk

Testing the first part of the rationality-improvement hypothesis is straightforward: it is necessary only to compare the influence of the charge severity and risk factors in the decisions of the experimental and control judges. Using the language of regression analysis, for example, we would expect that knowledge of the risk and severity characteristics of defendants would explain a greater proportion of the variance in experimental bail decisions than in control decisions.[2] Yet, the extent to which

risk and severity characteristics of defendants should play a greater role in experimental bail decisions cannot be estimated well in advance, for--because of the method through which these dimensions were derived--we would expect control decisions to bear a relationship of some magnitude with these two themes as well.[3]

Table 6.1 reveals that strong support for the first part of the rationality-improvement hypothesis relating to bail guidelines is not forthcoming. Oddly, the roles of charge and risk appear to have been only slightly greater among guidelines decisions. (Compare the R^2 of .41 for experimental judges with the R^2 of .34 for control judges.)

This is surprising for at least two reasons: First, the findings reported in earlier chapters have documented that guidelines decisionmaking differed considerably from nonguidelines decisionmaking (i.e., a "no-effects" conclusion has been rejected). (For example, the variability (variance) among guideline decisions had been substantially reduced compared to that of control decisions.) Yet, the dramatic changes in decisionmaking do not appear to be linked to a notably more influential role for the criteria--severity and risk--espoused by the guidelines.

The second reason it is surprising, of course, is that the factors of severity and risk were specially formulated for use by the experimental judges. The control judges had access to a wide array of background information on defendants, but were not exposed to the specific foci of the guidelines format. Although we might have expected reasonably comparable roles for severity in both guidelines and nonguidelines decisions because of its derivation (it was taken from study of what Municipal Court judges actually do), it is unexpected to see the minor role for risk in the decisions of the experimental judges. According to the theory behind the construction of the guidelines, the risk concern was to be the co-equal of the severity concern in the decisions of the guidelines judges.[4] (For a detailed examination of the impact of the bail guidelines on the criteria relied on by judges in making their decisions, see Appendix C.)

Assessing the Relative Effectiveness of Bail Guidelines: Confounding Factors

The second part of the rationality-improvement hypothesis posits that, because decisionmaking using the guidelines framework should be better oriented to the outcomes of concern (FTA and rearrest), the decisions of the experimental judges should be more effective overall. For at least three reasons, measurement of the effectiveness of bail guidelines is not straightforward, however.

To begin with the guidelines were not devised to reflect actuarial or predictive concerns only. Had the judges chosen a totally actuarial approach in formulating the guidelines matrix,

Table 6.1 Summary of regressions of guidelines criteria (charge severity, risk) on bail amounts, by judge group

Dependent variable	Independent variables	Simple r		R^2		Semi-partial R^2	
		Experimental	Control	Experimental	Control	Experimental	Control
Bail amount[a]	Charge severity (1-15)	.59	.53			.29	.24
	Risk (1-5)	.35	.32	.41	.34	.06	.06

[a]The dependent variable was defined for this analysis as the logarithm of the full cash bail amount. ROR and SOB bail were set equal to $0. For control judges, n = 960; but for experimental judges, n = 840 due to the exclusion of cases decided by Judge 8.

the guidelines would have had only one dimension, that of risk (ranking defendants according to the likelihood of defendant flight or rearrest). If this had been the case, the test of the predictive efficiency of bail guidelines would have been direct. It is notable that the judges acted to include a risk-assessment dimension; but they joined it with consideration of the seriousness of defendants' charges--the traditional bail standard that operates partly in conflict with the risk dimension.[5]

The second reason it is difficult to measure to effectiveness of bail guidelines directly by contrasting the FTA and rearrest rates among guidelines and nonguidelines defendants is that--even if the thrust of the guidelines had been exclusively predictive--the guidelines were not designed to encourage 100 percent compliance. As we have seen in earlier chapters, the experimental judges chose to depart from the decision ranges suggested by the guidelines 24 percent of the time. Thus, in a sense, the test of the effectiveness of guidelines when measured only in terms of FTAs and rearrests is further diluted when the practice of taking exception to the guidelines is factored in.

The last drawback is encountered because FTA and rearrest rates, the common grist of pretrial release evaluations, are incomplete yardsticks of the effectiveness of bail practices generally: they measure the performance of released defendants but ignore questions related to the use of pretrial detention, the other result of bail decisionmaking. By proper definition, effective bail practices would optimize the release of defendants before trial while minimizing the failure of defendants (through either FTA or rearrest) on release. Ineffective bail practices will, conversely, needlessly hold releasable defendants in jail and, thus, feed overcrowding and contribute higher than acceptable rates of pretrial flight and crime. In short, measures of the effectiveness of bail practices--whether guidelines-oriented or otherwise--should ideally be equally cognizant of pretrial release and pretrial detention.[6]

The Follow-up of Philadelphia Defendants

The fact that analysis of the performance of released defendants must confront limitations based on the three confounding concerns described above, however, does not mean that it is unimportant; to the contrary, there may be considerable practical value in such an exercise. In fact, a major focus of the guidelines experiment was the collection of follow-up data relating to the performance of defendants released under the two bail approaches. To calculate rates of FTA and rearrest for each group of defendants, the following procedure was employed:

All defendants who obtained release--either immediately at their first appearances before a judge or subsequently when bail was secured--were studied as at risk.[7] If defendants had not achieved release within a period of 90 days, they were considered detained and were not included in the follow-up study. Those

detained comprised 16 percent of the control defendants of 14 percent of the experimental defendants. If a defendant was able to gain pretrial release, he/she was followed-up for a period of 90 days[8] to learn whether a willful failure-to-appear had been recorded or whether an arrest for a crime occurring during the pretrial period was in evidence. In the event that a defendant's case was disposed of sometime before the completion of the pretrial period, only the time before that disposition was counted as at risk. Defendant failure through FTA or rearrest during pretrial release, thus, was calculated using the actual period during which the defendant was at liberty (at risk) pending adjudication of his/her case.

Comparison of the Performance of Experimental and Control Defendants during Pretrial Release

Table 6.2 shows the FTA and rearrest rates associated with the experimental and control bail approaches along with the rates of ROR, the use of cash bail and of pretrial detention. Experimental and control defendants displayed comparable rates of failure overall, but great diversity is noted when the failure rates associated with defendants whose bail was decided by individual judges are examined. (See Figure 6.1.) Guidelines judges ranged individually from low rates of 8 percent FTA and 5 percent rearrest to high rates of 19 percent FTA and 19 percent rearrest among their defendants. Nonguidelines judges ranged from low rates of 6 percent FTA and 5 percent rearrest to high rates of 19 percent FTA and 16 percent rearrest. Taken collectively, failure rates for guidelines and nonguidelines defendants differed little: approximately 13 percent of guidelines and 12 percent of nonguidelines defendants failed to appear at required proceedings willfully; 11 percent of nonguidelines defendants and 10 percent of guidelines defendants were rearrested for crimes committed during the pretrial period. Figures 6.2 and 6.3 display the rates of FTA and rearrest for each of the bail approaches when categories of current charges are considered.

In the previous chapter, the ways in which the guidelines format was designed to serve as a framework for enhancing the equitable treatment of defendants at bail were discussed. By formulating a classification system based on the dimensions of charge severity and risk, however, the guidelines were devised not only as a tool for improving equity but also as a means for addressing effectiveness questions relating to bail. More directly, the presumed decision ranges in each of the 75 defendants categories designated by the charge-risk matrix were produced by consideration of charge and likely risk of flight or crime during pretrial release simultaneously.

Table 6.3 exhibits the rates of absconding and rearrest among defendants released under each bail approach from the perspective of the presumptive decision zones of the guidelines (the ROR, ROR/low cash, and cash zones).[9] Slight differences between the groups can be noted: For example, experimental defendants

Table 6.2 Summary of bail assigned to defendants by Philadelphia judges (ROR, median bail, and detention), by rates of failure to appear and of rearrest, by judge group

Judge Group	Decisions and Outcomes: Total N	Total Percent	ROR/SOB N	ROR/SOB Percent	With cash[b] %	With cash[b] Md $	Detained N	Detained Percent	FTA/ at risk Number	FTA N	FTA Percent	Rearrest/ at risk Number	Rearrest N	Rearrest Percent
Guidelines[a] (Experimental)														
Total	840	100.0	377	44.3	55.7	$1,500	271	27.0	716	92	12.8	713	70	9.8
Judge 1	120	100.0	46	38.3	61.7	1,050	35	25.8	103	8	7.8	105	5	4.8
2	120	100.0	57	47.5	51.7	2,800	45	25.8	99	18	18.2	100	9	9.0
3	120	100.0	73	60.8	37.5	1,000	38	24.4	105	20	19.0	104	20	19.2
4	120	100.0	43	35.8	62.5	1,950	44	32.5	101	10	9.9	94	8	7.4
5	120	100.0	50	41.7	57.5	1,950	38	36.7	103	8	7.8	102	10	9.8
6	120	100.0	51	42.5	57.5	850	40	30.8	101	15	14.9	102	12	11.8
7	120	100.0	52	43.3	57.5	1,000	31	23.3	104	13	12.5	103	6	5.8
Nonguidelines (Control)														
Total	960	100.0	421	43.9	56.1	$2,000	263	27.4	796	95	11.9	799	86	10.8
Judge 9	120	100.0	60	50.0	50.0	2,500	36	30.0	106	18	17.0	106	5	4.7
10	120	100.0	40	33.3	66.7	1,100	31	25.8	99	10	10.1	100	14	14.0
11	120	100.0	33	27.5	72.5	2,450	48	40.0	86	6	7.0	88	6	6.8
12	120	100.0	57	47.5	52.5	2,000	25	20.8	104	8	7.7	105	17	16.2
13	120	100.0	38	31.7	68.3	1,000	32	26.7	103	20	19.4	102	13	12.7
14	120	100.0	57	47.5	52.5	1,950	28	23.3	99	6	6.1	98	9	9.2
15	120	100.0	74	61.7	38.3	2,550	29	24.2	101	12	11.9	102	16	15.7
16	120	100.0	62	51.7	48.3	3,250	34	28.3	98	15	15.3	98	6	6.1

[a]The cases decided by Judge 8 were excluded from the analysis.

[b]Median bail designates medians for cases with cash bail set (excluding ROR and SOB). Medians were rounded to the nearest $50.

Figure 6.1 Percent of defendants failing to appear in court willfully and percent rearrested during pretrial release, by judge group, by individual judge

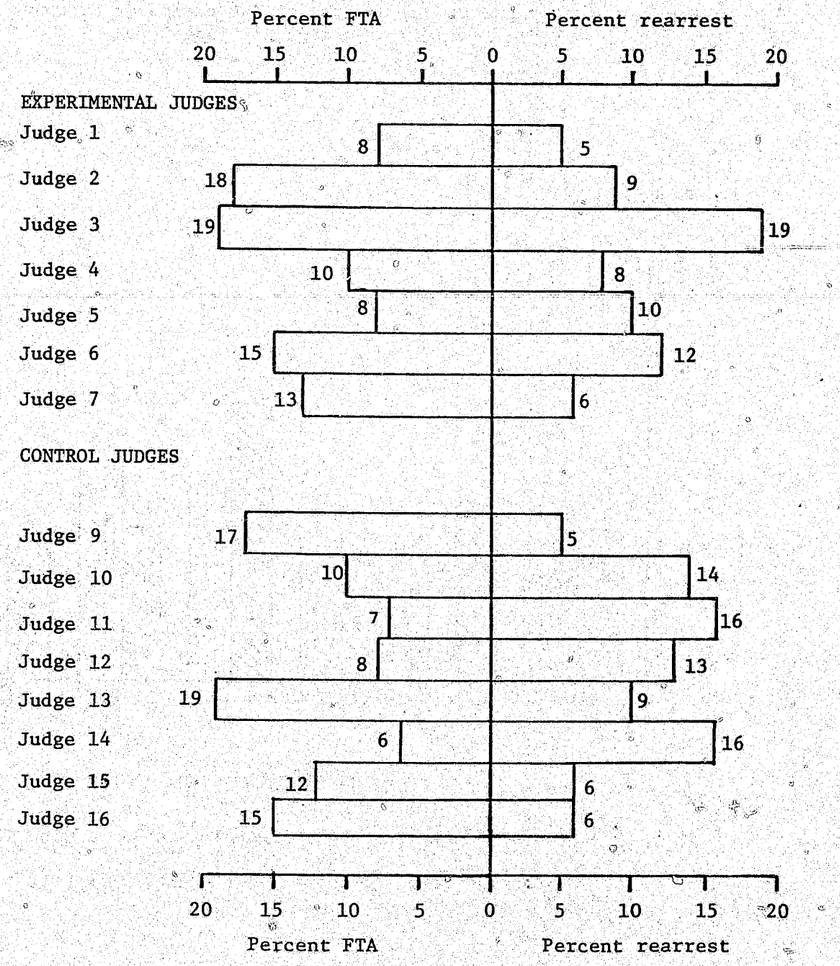


Figure 6.2 Percent of defendants failing to appear in court willfully, by seriousness of charge, by judge group

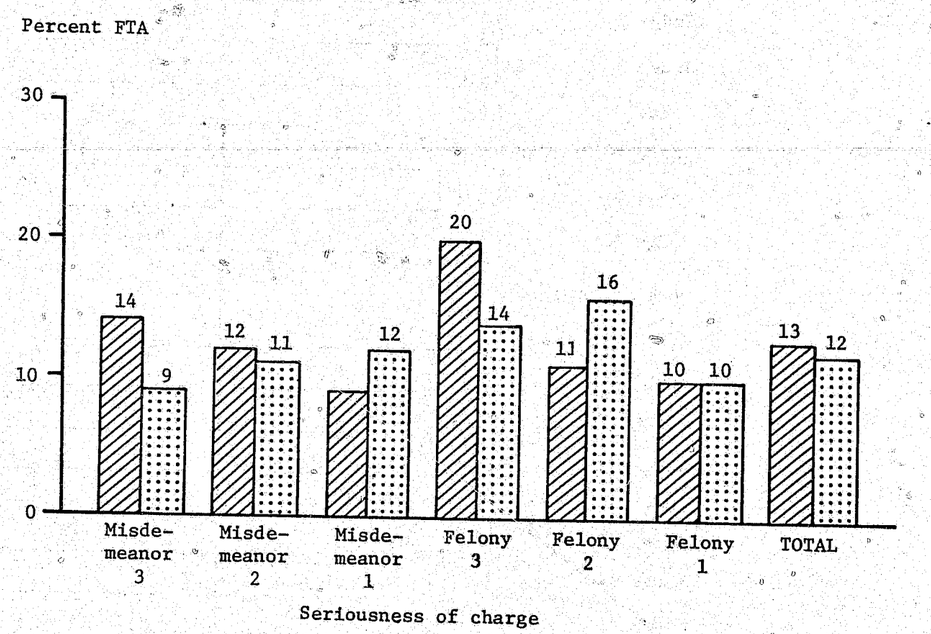


Figure 6.3 Percent of defendants rearrested during pretrial release, by seriousness of charge, by judge group

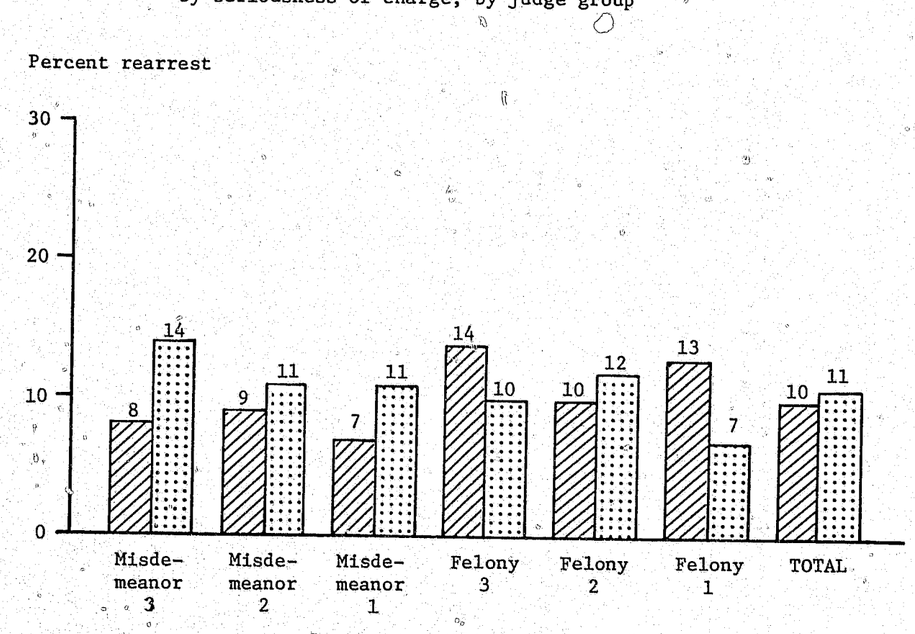


Table 6.3 Summary of bail assigned to defendants by Philadelphia judges (ROR, median bail and detention), by guidelines zones, by rate of failure to appear and of rearrest, by judge group

Judge Group	Total Number	Total Percent	ROR zone Number	ROR zone Percent	ROR-low cash zone Number	ROR-low cash zone Percent	Cash zone Number	Cash zone Percent
Guidelines judges[a]								
Total	840	100.0	302	100.0	126	100.0	412	100.0
ROR/SOB	372	44.3	253	83.8	60	47.6	59	14.3
Median cash	$1,500		$950		$950		$1,500	
Detained	271	32.3	9	3.0	25	19.8	193	46.8
With FTA	92[b]	12.8	27	9.3	23	20.2	42	13.5
With rearrest	70[c]	9.8	18	6.1	11	9.6	41	13.4
Nonguidelines judges								
Total	960	100.0	352	100.0	144	100.0	464	100.0
ROR/SOB	421	43.9	252	71.9	71	49.3	98	21.1
Median cash	$2,000		$1,000		$1,000		$2,500	
Detained	263	27.4	19	5.4	26	18.1	218	47.0
With FTA	95[d]	11.9	27	7.9	15	11.5	53	16.4
With rearrest	86[e]	10.8	27	7.0	17	13.0	42	12.9

[a]Cases decided by Judge 8 have been excluded from the analysis.

[b]The total at risk population is 716.

[c]The total at risk population is 713.

[d]The total at risk population is 796.

[e]The total at risk population is 799.

absconded notably more often than the controls in the low cash-ROR zone (20 v. 11 percent FTA) but slightly less often in the cash zone. Experimental defendants in the ROR and low cash-ROR zone were rearrested somewhat less frequently than controls. Yet, overall the two bail approaches appear to generate roughly comparable rates of failure among their released defendants.[10]

Conclusion: Implications for the Rationality Hypotheses

In examining the implications of guidelines for the enhancement of rational decisionmaking in bail, we hypothesized that bail decisions under the experimental approach would a) be based more on the severity and risk criteria exposed (after much study and debate) by guidelines; and that b) this great reliance on more appropriate criteria would foster more effective bail decisions (i.e., would produce lower failure rates among released defendants). Although we have pointed out some of the difficulties encountered in attempting to measure effectiveness-related questions quite directly, in several respects, the findings reported in this chapter do not lend support to these hypotheses. Guidelines matrix criteria did not appear to be noticeably more influential among experimental decisions and defendants released under guidelines criteria did not distinguish themselves by markedly lower rates of FTA and rearrest in the follow-up study.

Nevertheless, there is a rather positive side to these findings as well: First, in recording failure rates among released defendants that were not worse than (and were in fact sometimes better than) the rates exhibited by control defendants, the guidelines bail approach has contributed noticeable progress in the area of equity, for example, without aggravating the problem of FTA and rearrest. Bail practices have changed to a noticeable extent under guidelines, and yet a firm grip has been maintained on the rates of misconduct among released defendants.

Yet, what is perhaps most positive is the fact that the guidelines approach now offers a method for constructive action relating to defendant performance on pretrial release in the future that does not exist under the traditional approach. Just as the guidelines framework offered a zone-by-zone and cell-by-cell tool for the evaluation of the equity of bail decisions, it also permits an analytic approach to the examination of pretrial flight and crime. Discussion of revised bail procedures designed to improve on the current failure rates can be focused on given categories of defendants in a way not previously possible. In this respect, the version of bail guidelines tested in the Philadelphia experiment represents only a "first draft" and can be improved upon based on findings such as these. (For a discussion of how guidelines might be revised as a result, see Chapter Eight.)

NOTES

CHAPTER SIX

[1]In the report of the feasibility study, only a very modest correlation (r = .10) between the classification of defendants based on ROR "scores" (the factors most influential in shaping ROR decisions) and a combined failure criterion (either FTA or rearrest) was noted and a similarly weak relationship between the factors determinative of cash bail decisions and failure (r = -.02) was found (Goldkamp et al., 1981: 68, 75).

[2]This assumes of course that experimental and control defendants do not differ noticeably along the risk dimension. In fact, examination of the risk characteristics of the two defendant groups reveals comparable profiles: 13.1 percent of the experimental defendants fell into Risk Group 1, compared to 14.6 percent of control defendants; 19.3 percent of experimental defendants fell into Risk Group 2, compared to 16 percent of control defendants; 21.9 percent of experimental defendants fell into Risk Group 3, compared to 23.6 percent of control defendants; 25 percent of experimental defendants fell into Risk Group 4, compared to 22.4 percent of control defendants; and, finally, 20.7 percent of experimental defendants fell into Risk Group 5, compared to 23.3 percent of control defendants.

[3]The reader may recall that during the development of the guidelines, the charge severity dimension was derived from analysis of how judges appeared to rank criminal charges according to severity in actual bail decisions (see Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981). Thus, because severity was derived from study of actual judicial practices in Muncipal Court, we would expect control judges to show a reliance on charge severity in their decisions nearly comparable to the experimental judges. Even though risk was determined through statistical analysis of the performance of released defendants during the feasibility study and not through study of bail decisions, it should be expected that some relationship between the factors comprising the risk classification and control judge bail decisions would be found. We would hypothesize, however, that experimental decisions would focus more singularly on charge severity and on risk characteristics of defendants in their decisions in using the guidelines. Most especially, we would expect a more influential role for risk among experimental bail decisions than among control decisions.

[4]It should be noted that quite a variety of regression models were attempted in analysis of this phenomenon with similar results. In depth investigation of this finding--that the risk classification did not emerge in a powerful fashion in the guidelines-generated decisions beyond what would be expected under normal bail practices--revealed that one explanation may be a design flaw in the guidelines. In addition to other explanations, to be discussed below, the design of the guidelines themselves may have inadvertantly limited the role that could be played by the risk dimension. See Appendix C. In general what appears to be

happening is this: The guidelines group is both more consistent (homogeneous) and more skewed. Thus, the guidelines do seem to force conformity most of the time; but when they do not a consequence is that deviations from the guidelines are more dramatic.

[5]The correlation between charge severity and risk in both defendant samples is rather slight, only r = .15 in the guidelines sample and r = .17 in the nonguidelines sample.

[6]Obviously, it is easier to measure the success of release decisions through follow-up of the defendants' records of FTA and rearrest than it is to estimate detention "mistakes" involving persons who, if instead released would not have failed to appear or be rearrested. See Goldkamp (1982) for an empirical analysis of the performance of detained defendants who were subsequently granted special release. For discussion of the calculation of an "effectiveness ratio" designed to norm rates of failure to release and detention practices, see Appendix D.

[7]As has been noted earlier, nearly three-fourths of both groups of defendants achieved release within 24 hours; 14 percent of guidelines defendants and 16 percent of nonguidelines defendants did not obtain release during the follow-up period and thus were excluded from the study. Interestingly, under both bail approaches, failure rates among defendants gaining immediate release who roughly half that of defendants who gained later release. (See Appendix E.)

[8]The willfulness of FTAs was determined by examination of bench warrants and their dispositions. Continued absence from the jurisdiction as indicated by longstanding nondisposed bench warrants was assumed to be willful.

[9]For the sake of simplicity only the zone perspective is used here. Quite clearly, discussion of 75 cells of defendants would be quite tedious and would be plagued by insufficient numbers of cases in many cells. See, however, Chapter Eight.

[10]For further data relating to the performance of defendants during pretrial release under each approach, see Appendix E. In particular, data describing the seriousness of the crimes for which defendants were rearrested are provided as well as data describing the periods of time passing before FTAs or rearrests occurred are supplied.

Chapter Seven

SUMMARY: THE STRENGTHS AND WEAKNESSES OF BAIL GUIDELINES ASSESSED

In the Philadelphia guidelines research we have attempted to develop a decisionmaking resource for judges who decide bail and through it to address several of the principal unresolved issues relating both to the bail function and the use of pretrial detention in the United States. In a previous report (Goldkamp, Gottfredson and Mitchell- Herzfeld, 1981), we have described the collaborative process of empirical research and policy debate, involving the judges of Philadelphia's Municipal Court and the research staff of the Bail Decisionmaking Project, that resulted in the development of bail guidelines. This report has detailed findings from the second phase of the research during which the guidelines were implemented in a major urban court system on an experimental basis.

In framing the application of guidelines to bail as an experiment, we have sought to learn whether the guidelines methodology pioneered by Gottfredson and Wilkins (Gottfredson, Wilkins and Hoffman, 1978) in the areas of parole and sentencing could contribute progress toward resolution of specific, longstanding issues in a measurable sense. At the same time that the experiment has generated findings with implications for issues of current interest related to bail and pretrial detention, it also allows inferences to be drawn about the guidelines concept itself. Although we conclude overall that the experiment has produced positive and, in certain respects, exciting results, the experimental design has allowed us to be made aware of certain strengths and weakness of the decisionmaking approach.

Finally, it is important to alert the reader of the possibility that these findings may to some extent be affected by the jurisdiction chosen for the study. In selecting Philadelphia, we purposefully opted to conduct the research in a modern jurisdiction, one with well-developed ("reformed") bail practices and pretrial services resources. To the degree that our results show that improvements may be achieved in the bail task in Philadelphia, we might expect guidelines to make a more dramatic impact in jurisdictions with less developed pretrial processing procedures and a less organized bail decisionmaking.[1]

Assessing the Findings of the Bail Experiment

In order to create comparable groups to study experimentally, we randomly selected judges to be included in either the experimental or control groups. The aim of the analysis, then, was to contrast the decisions, characteristics and outcomes of defendants having bail decided under the different approaches.[2] The logistics involved in implementing the design--which, in effect, called for two kinds of bail decisionmaking and support procedures to operate in parallel within one court--were exceedingly demanding

during the 14 month period of the experiment and required close monitoring of all operations by the project staff and the leadership of the Municipal Court. Surprisingly, the obstacles encountered and the problems that surfaced were minor and were addressed without serious difficulty.

As we have discussed in the previous chapters, the experiment sought to test a number of hypotheses that are reviewed in the following summary:

1. Practicality and Compliance: Many of the questions addressed by the study were complex and likely to produce equivocal results, given their long histories of controversy and resistance to reform. One question, however, was quite uncomplicated from a theoretical point of view, but had the capacity to make useless discussion of all the others: Could the judges and would the judges employ the bail guidelines as the decisionmaking resource they were designed to be--and would they, to the degree intended, comply with them? The findings presented in Chapter Three indicate that the experimental implementation of bail guidelines was reasonably successful from this practical point of view. Specifically the decisions of the experimental judges conformed to the guidelines ranges in a substantial majority of cases (about 76 percent of the time); in addition, reasons were given by the experimental judges in a majority of the instances in which exceptions from the guidelines were being taken.

Along with these positive findings that suggested that judges could indeed make use of the guidelines were more minor but still troublesome findings that raised questions that must be confronted in future uses of guidelines: a) some judges failed systematically to note reasons for their departures from the decision ranges suggested by guidelines; and b) one judge (Judge 8) appeared substantially to have misunderstood the guidelines decision procedure.

The questions that must be answered relating to these two findings involve themes of resistance and confusion. First, to the extent that certain judges might have objected to guidelines in principle, perhaps, as an encroachment on their judicial prerogatives, the issue of resistance to this rational-seeming, legal-social scientific approach must be seriously examined. Alternatively, to the extent that the guidelines procedure may have generated confusion while claiming to make the decision tasks more simple, continued use of the guidelines should come to grips with the facility with which the concept and procedures are in fact grasped by the judges.

2. The Scope of Change: Without the experimental design, it would not be possible to contrast guidelines-produced decisionmaking with "normal" decisionmaking. In fact, despite the finding that 76 percent of the decisions made by the experimental judges agreed with the decision ranges suggested by the guidelines, without the decisions of the control judges for comparison, it is

possible that guidelines could have produced no change in decision practices at all. Thus, a second major question was related to the nature and scope of changes in bail decisionmaking as practiced by the experimental or guidelines judges.

Clearly, a goal of the experimental guidelines approach was examination of the possibility of bringing about significant change in bail practices. Yet, at the same time, guidelines were not designed to be a vehicle of radical change, just as they were not intended to cast in stone ultra-conservative bail traditions of the past. Nor were they intended to foster change for its own sake. Rather, the job was to devise a decisionmaking format that built in the best features of existing practices and simultaneously pointed bail in new directions--in response to a perceived need for careful and specific changes in bail policy. To be considered successful in an experimental "trial run," the guidelines format, therefore, should have felt reasonably comfortable to the judges who were employing it, but yet have incorporated new foci. In short, we sought an approach that in some general respects resembled normal bail practices but that in addition introduced significant qualitative differences as well.

As described in Chapter Four, the findings in this regard were quite positive: although the guidelines and nonguidelines decision approaches shared similarities (such as the level of ROR, cash bail and pretrial detention associated with their decisions), important qualitative differences emerged as well. (It is more accurate to note that, though comparable in other respects, the average amount of cash bail assigned by judges using the guidelines was a step or two lower than the level of cash bail associated with nonguidelines decisionmaking.) Analyses in Chapter Four revealed that surface similarities between the bail approaches masked real differences in the kinds of decisions given defendants. ROR, for example, seemed to be awarded more liberally to nonseriously charged defendants and more stringently to seriously charged defendants by guidelines judges than by judges who did not use the guidelines. Roughly parallel findings were recorded concerning the resulting use of pretrial detention.

Even more striking differences in the bail decisions of the two groups of judges were found when the guidelines grid itself was used as a point of reference, representing in a sense a theoretically ideal bail policy. Obviously, the control judges did not consult the guidelines when deciding bail; yet, if there were no differences between their decisions and the decisions of the experimental judges, then the decisions of the control judges would have "conformed" to or agreed with the suggested guidelines ranges as frequently as the decisions of the experimental judges, even without ever having seen the guidelines. But, in fact, the extent to which the decisions of the two judge groups were congruent with the guidelines ranges--the policy ideal--were markedly at variance. Differences were especially accentuated among defendants classifiable within the presumed cash bail decision zone: while 65 percent of the experimental decisions

conformed to the guidelines ranges in that zone, only 38 percent of the decisions made by the control judges fell with in the suggested ranges.

In short, though similar in several gross traits, the decisions of the experimental and control judges were different--in major ways. Moreover, the guidelines approach distinguished itself (by differing to the greatest degree from the traditional approach represented by the control judges) in precisely the region associated with the greatest inequities: the use of cash bail in moderate to serious cases.

3. Equity in Bail Under the Guidelines Approach: Major questions have been raised concerning the equity of bail practices in the United States in recent decades. Bail practices have been viewed as inequitable for (at least) two related reasons.[4] First, critics have argued that bail decisionmaking is inconsistent and arbitrary, and sheltered by the sanctity of judicial discretion. Second, the traditional reliance on cash as the principal vehicle for bail decisions has added discriminatory economics to the already problematic allocation of pretrial detention among the criminally accused. Thus, it is argued, not only are similarly situated defendants unlikely to receive comparable bail decisions or be exposed to comparable prospects of pretrial detention, but financial resources (or lack thereof) further serve as a confounding factor lessening the chances for an equitable use of pretrial detention.

Bail reform efforts of the last 20 years have targeted inequity in bail in both areas: they have sought to minimize the side-effects of cash bail through such innovations as ROR, conditional release and deposit bail[5] and they have attempted to influence judges to improve their decisionmaking through consideration of better information relating to defendant backgrounds (e.g. community ties) than had been previously available. The guidelines experiment sought to test a means of assisting judges more directly in organizing the exercise of their discretion in the bail function and in constructing a cohesive policy approach to serve the entire court. In this regard, perhaps the most critical hypothesized advantage of the guidelines format was to enhance the equity of bail decisions--and by implication, the resulting use of pretrial detention.

A first step in addressing the equity question was to decide upon a definition of "similarly situated" to serve as a yardstick for evaluation of bail practices. The policy debate conducted by the Muncipal Court judges concerning the appropriateness of the charge standard, community ties and other criteria in this light is described in the report of the feasibility study. The important outcome of the guidelines construction process was to agree that the appropriate equity yardstick--represented by the guidelines decision matrix--should be co-determined by considerations of charge severity and the likelihood that a defendant would abscond and/or be rearrested for a crime committed during pretrial

release. These dimensions--charge severity and risk--produced a 75 category ("cell") classification scheme on the basis of which the relative equity of bail decisions would be evaluated.

In the ensuing experiment, we hypothesized that the decisions received by defendants within categories of the guidelines would be noticeably more consistent (or comparable or "similar") than those received by defendants in similar categories having bail decided in the normal fashion by the control judges. Stated another way, guidelines-produced decisions, we hypothesized, should be less disparate and hence more equitable than nonguidelines decisions.

The results reported in Chapter Five--using interquartile ranges and ratios comparing variances as measures of variability or "consistency"--indicate that the guidelines had a major impact on improving the equity of bail decisions. Using either measure under the guidelines framework, the bail decisions of the experimental judges were substantially less variable, markedly more consistent. We conclude that the guidelines approach to bail decisionmaking may represent a substantial tool for reducing the inequities associated with the bail function and the resulting use of pretrial detention.

4. Guidelines as a Tool for More Rational Decisionmaking and Greater Effectiveness: In contrast to the findings in Chapters Three, Four and Five suggesting that the experimental approach fostered dramatic changes in decisionmaking, the results concerning rationality and effectiveness are more mixed. We hypothesized that guidelines should produce decisionmaking based on criteria more related to the outcomes of concern (FTA, rearrest, detention) than traditional bail practices. We took this to mean that the criteria built into the guidelines decision matrix--severity and risk--should exercise greater influence in the decisions of experimental judges than in those of the control judges, and that guidelines decisions should also be more effective (i.e., guidelines defendants should show lower rates of FTA and rearrest).

Neither of these assumptions were supported by the findings. Charge and risk appeared to play only a slightly greater role in the decisions of the guidelines judges and the rates of defendant failure during pretrial release were roughly comparable under the two bail approaches. On the positive side, however, the substantive changes in decisionmaking brought about by the guidelines (e.g., enhanced equity) were accomplished without a worsening of FTA and rearrest rates among released defendants. Moreover, the most positive result is that guidelines may now serve as an analytic tool in developing approaches to defendant failure during pretrial release in the immediate future. Adjustments in the guidelines themselves can be made based on the zone-specific or cell-specific analyses. (See Chapter Eight.) In this sense, the

guidelines offer a resource for improving the effectiveness of bail practices that has not previously existed.

Although careful use of performance measures of defendants released before trial--such as FTAs and rearrests--could serve as important bases for modifying guidelines with an eye toward increasing their effectiveness, we must urge careful consideration of the following caveat: Effectiveness in bail cannot truly be understood only as the rates of failure among released defendants; rather, one must simultaneously weigh the appropriateness of pretrial detention, difficult as that is. In the next section we discuss briefly how the guidelines may help evaluate the use of pretrial detention. (For discussion of a more appropriate effectiveness measure, see Appendix D.)

The Implications of Bail Guidelines for Pretrial Detention

Behind the concerns about the exercise of the bail function that have shaped the guidelines research lie fundamental questions about the use of pretrial detention in American justice. Questions relating to the rationality, visibility, equity and effectiveness of bail decisionmaking are, of course, motivated by debates over the use of pretrial detention.

If discussions of bail seem overly complex or needlessly abstract, it is because the allocation of pretrial detention among the criminally accused in the United States is generally not a direct outcome of the bail decision, as it is in the Canadian system, for example. Judges may decide release directly by assigning ROR or some form of unsecured or nonfinancial bail--but only in rare cases may they detain defendants outright through denial of bail.[6] Mostly, detention is determined indirectly by means of assigning cash bail in lower or higher amounts, which a defendant may or may not afford.

Recent studies (Clarke et al., 1976; Goldkamp, 1977, 1979; Roth and Wice, 1978; Goldkamp et al., 1981) have documented the obvious relationship between the cash bail decisions of judges and the use of pretrial detention. Although exact formulas vary from location to location, the higher the cash bail assigned, the greater the likelihood a defendant will spend time in jail before trial. Not only is cash bail setting highly discretionary, but it offers the judge a built in "hedge" factor: he/she never has to state explicitly whether the intention is to detain a particular defendant. Pretrial detention, therefore, is in part a product of known themes (Goldkamp, 1979; Goldkamp et al., 1981) as well as of unknowns for which the judge cannot be held responsible--such as the defendant's financial resources (or those of friends or family), or in many jurisdictions the availability of a bondsman.

1. The Level and Length of Pretrial Detention: Given the critical state of overcrowding in many American jurisdictions, a critical question asked about the guidelines was whether they would be likely to add to or subtract from the population of

pretrial detention. Our findings show that pretrial detention was used with similar frequency under the guidelines and traditional approaches; guidelines appeared neither to increase or decrease the rate of detention nor the duration of pretrial confinement.

2. The Relative Selectivity of Pretrial Detention Under Guidelines: At a time when critics have suggested that bail practices either confine reliable defendants needlessly before trial or fail to hold dangerous defendants in sufficient numbers, an important question was directed at the selectivity of pretrial detention under each approach. When the uses of detention were contrasted at the bivariate level, some differences were observed. Guidelines judges detained substantially more felony-three defendants, and confined proportionately fewer defendants with three or more prior drug arrests, fewer defendants with lengthy histories of weapons arrests, greater proportions of defendants with prior convictions for serious crimes against the person, and a smaller proportion of defendants with extensive records of prior convictions for weapons offenses and extensive histories of prior FTAs. (See Appendix F.)

Although these simple bivariate findings suggest qualitative differences in the detention resulting from the experimental and control approaches, it is difficult to detect an overall pattern of differences, especially when employing multivariate analyses. A discriminant analysis was employed to attempt to determine which factors might differentiate most between defendants detained as a result of guidelines bail and those detained under normal bail procedures. Even after testing the effects of 50 independent variables, no factors were found to differentiate significantly between the two groups of detainees.[8] We conclude that, when statistical controls are exercised, the kinds of defendants detained under each of the approaches are roughly similar.

Guidelines as an Evaluation Framework for the Detention Population

As the debate about the role of bail and pretrial detention in overcrowding continues, various population reduction strategies are proposed, based on untested beliefs about the characteristics of those confined. Certain of these strategies imply that chaotic or inequitable bail practices needlessly crowd jail facilities with individuals who should have been released and claim, for example, that large proportions of those detained are not charged with serious crimes, have reasonably strong "community ties," or are held only because they are poor and unable to afford even low amounts of cash bail. It was precisely this kind of concern that led the guidelines effort to address from a policy perspective the exercise of the bail function. As a result of having debated the goals and criteria that should govern bail in Philadelphia, the Muncipal Court judges have also constructed a framework through which the detention population in overcrowded jails may be evaluated.

We would expect, for example, rather than using "community ties" or levels of cash bail as the yardstick, that a great deal could be learned about the jail population by classifying detained defendants according to the guidelines dimensions of risk and charge severity and then by comparing the actual bail decisions holding defendants with bails they might have had, if guidelines had been in effect when their bail had been decided. In this way, one might argue, the appropriateness of pretrial detention may be evaluated using a framework that has taken into account the goals and criteria that govern bail from the policy perspective of the judges responsible and that, as well, ought to govern the use of pretrial detention.

A study of the jail population in Philadelphia (on a given, "typical" day during the experiment) provides an illustration of how the guidelines framework can assist in analyzing the pretrial population.[9] On December 9, 1981 an estimated 57 percent of all inmates of the Philadelphia prisons were held on bail. (About 33 percent of the total population of the prisons were held exclusively as a result of bail, the remaining 24 percent were held on bail in addition to other holds, such as bench warrants, detainers, etc.)

Figure 7.1 shows the distribution of defendants detained in Philadelphia at that time by risk and charge severity categories and by categories of the guidelines themselves. Detained defendants were predominantly high risk (76 percent fell within risk categories 4 and 5) and seriously charged (nearly half were classified in the most serious charge category[10]). In short, detained defendants overall were high-risk and seriously charged from the perspective of the guidelines decision framework. This stated, it is significant to note also that 14 percent of defendants were rated as lowest risk (falling into risk categories 1 and 2) and about 15 percent were charged with crimes ranked in the lowest 5 severity categories.[11]

In this Philadelphia illustration, classification of defendants within guidelines zones and cells does not reveal that a large share of low risk, low severity defendants is likely to be found. However, 4 percent of the population at that time, had their cases been decided under the guidelines, would have been classified as releasable on ROR according to the guidelines; another 7 percent would have fallen within the either-ROR-or-low-cash bail zone. Fully 89 percent would have fallen within the presumed cash zone.

Although this illustrative analysis of the Philadelphia detention population[12] using the guidelines decision format as an evaluative tool does not suggest that a substantial proportion of the population has been needlessly detained, at a minimum it does offer an argument for reconsideration of the approximately 11 percent of those held. Table 7.1 further shows that for the majority of defendants held on cash bail, guidelines might also

Figure 7.1 Clasification according to bail guidelines of defendants held in Philadelphia prisons awaiting trial on December 9, 1981

(Note: On December 9, 1981, an estimated 57.1 percent of the 3,695 persons confined in the Philadelphia prisons were held only as a result of bail or bail and other holds; 32.1 percent were held only as a result of bail.)

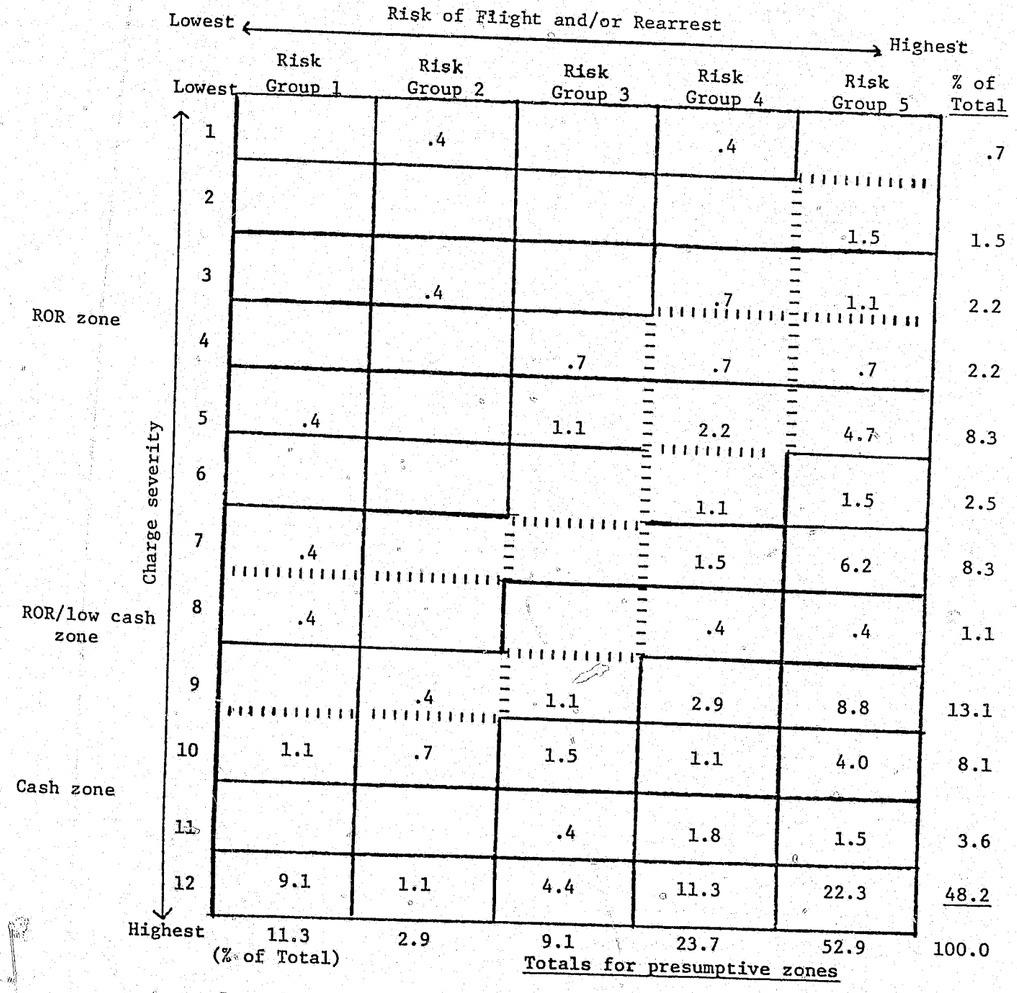


Table 7.1 Distribution of Philadelphia detainees among guidelines categories and percent having higher actual bail

Guidelines category	Estimated percent of all detainees		Estimated percent having bail higher than guidelines
	Percent	N	Rearrest
ROR zone	4	12	75
Cell 2	0	1	100
Cell 5	0	1	0
Cell 12	0	1	100
Cell 14	1	2	100
Cell 18	1	2	50
Cell 21	0	1	100
Cell 23	1	3	67
Cell 31	0	1	100
ROR/low cash zone	6	17	47
Cell 10	1	4	50
Cell 15	1	3	67
Cell 19	1	2	0
Cell 24	2	6	50
Cell 36	0	1	0
Cell 42	0	1	100
Cash zone	70	248	37
Cell 20	1	2	100
Cell 25	5	13	31
Cell 29	1	3	67
Cell 30	1	4	0
Cell 34	1	4	0
Cell 35	6	18	28
Cell 39	0	1	0
Cell 40	0	1	100
Cell 43	1	3	0
Cell 44	3	8	25
Cell 45	16	24	50
Cell 46	1	3	33
Cell 47	1	2	50
Cell 48	1	4	50
Cell 49	1	3	100
Cell 50	4	12	33
Cell 53	0	1	100
Cell 54	2	5	60
Cell 55	1	4	25
Cell 56	9	25	52
Cell 57	1	3	33
Cell 58	4	12	67
Cell 59	11	31	32
Cell 60	22	62	24

[a]These data have been drawn from a random sampling of the population of the institutions that affectively served as Philadelphia's "jail" on December 9, 1981. On that date 3,094 persons were confined. A 13.5 percent random sample was drawn (N=498) of which 277 persons or 56 percent were held on bail awaiting trial. It should be noted that a certain number of these individuals were also held for other reasons, such as detainees, probation violation, etc.

provide a rationale for bail reductions given the fact that their bails are substantially higher than would have been suggested by guidelines.

In short, guidelines--taking into account the severity of the current charges and the relative risk that defendants would flee or be rearrested for a new crime--may provide a rationale for bail reduction or selective use of supervised or conditional release. This could assist a jurisdiction in pinpointing categories of defendants who would be good candidates for alternatives to pretrial detention, should they exist in the detention population of the jail.

It is important to note that these findings may be specific to Philadelphia, where an effective pretrial services program has been in operation. In other jurisdictions where such programs or procedures do not exist, the use of bail guidelines as an evaluative framework for the local detention population might have a far more dramatic impact.

NOTES CHAPTER SEVEN

[1]For discussion of the selection of the study site, see the report of the feasibility study (Goldkamp, Gottfredson and Mitchell-Herzfeld, 1981). The decision was made to conduct the study in a "progressive" jurisdiction not only because of concerns relating to the ability to collect pertinent data but also because in jurisdictions yet to receive the benefits of bail reform, the results were likely to rediscover the original problems plaguing bail. In a sense, then, these results assume a reasonable modern jurisdiction with pretrial services resources available to expedite pretrial release among criminally charged defendants. A far greater impact on bail practices and on pretrial detention might have been expected in jurisdictions lacking the accouterments of bail reform.

[2]In planning the design, the objective was to include comparable groups of defendants and judges in the guidelines (experimental) and nonguidelines (control) treatments and to contrast their outcomes. Random selection of 16 judges (of the 22 on the court), 8 for each bail approach, was utilized as the vehicle for random allocation. Eight judges formed the experimental approach and eight decided bail in their normal fashion--aware that a study of bail practices was being conducted in the court, but not aware of their selection as control judges.

[3]Reasons were not listed for 35 percent of the decisions departing from the guidelines ranges; most of these were contributed by 2 or 3 judges.

[4]For a comprehensive discussion of equal protection issues related to bail and pretrial detention, see Goldkamp (1979).

[5]Some have argued for elimination of cash bail entirely as the most effective means for addressing its associated inequities (Pound and Frankfurter, 1922; Foote, 1954; NAPSA, 1978).

[6]Generally, bail may be denied in most states in capital cases. (For a review of bail laws, see Goldkamp, 1979; Gaynes, 1982.) But see new laws in Colorado, Florida, California, Vermont, Illinois and Arizona in which the denial of bail or the preventive detention of defendants has been expanded (VI/6 Pretrial Reporter, December 1982).

[7]Detention here is measured as released within 1 day versus held longer than 1 day.

[8]See Appendix F.

[9]On December 9, 1981 the total population of the Philadelphia prisons--the functional equivalent of the urban jail facility--stood at 3,695 persons. A random sample (N=492) of all the confined was studied to provide estimates of the actual

characteristics of confined persons--more than half of which were pretrial detainees. The reader should note that error of 2 or 3 percent points may be associated with the estimates discussed. For the precise margins of error associated with given estimates at the 95 percent confidence level, see Appendix G.

[10]This analysis was based on use of the revised guidelines format which collapsed the 15 category severity dimension into 12 categories. Thus, the matrix was reduced from 75 cells (5 x 15) to 60 cells (5 x 12). See Figure 8.1 for a copy of the revised format.

[11]Id.

[12]It should be noted that some of the detainees in this sample may have had bail decided under the guidelines, because the experiment had been underway for 12 months at the time of the jail sample. The extent to which this may have been true is unknown, since only 8 of the 22 judges who set bail in Municipal Court were using guidelines during that year.

Chapter Eight

REVISION OF THE BAIL GUIDELINES

Guidelines theory posits that improvements in decision practices can be brought about not only by use of the guidelines (to the extent that they have been built to reflect enlightened policy) but also by modification of guidelines based on feedback generated along the way. That is, that guidelines approach should not be viewed as an inflexible policy fixed for all time, but should be seen as a policy resource that can accommodate changing realities and lessons learned through practical experience. This hypothesized value of guidelines is potentially the most worrisome, for it returns the responsibility for monitoring and modification to the judicial system itself after conclusion of the research. Other experiences with guidelines (in sentencing and parole) raise questions about whether this feedback/revision function of guidelines is likely to be taken advantage of.

Thus far there have been hopeful signs in Philadelphia that this evolutionary aspect of guidelines has been understood. Shortly after the experimental period ended, but before final analysis of the data had been completed, suggestions were made by the leadership of the court to simplify the guidelines form and to revise the notation-of-reasons feature to include a category relating to the applicability of new mandatory sentencing provisions that had been enacted in Pennsylvania. The preliminarily revised guidelines reduced the 15 category charge severity dimension to 12 levels and as a result condensed the decision matrix from 75 to 60 "cells" of defendants. (See Figure 8.1.)

Hopefully, one of the values of the findings of the experimental study will be to suggest ways in which the guidelines may be revised to serve the court better in the future. In this concluding section, we would like to demonstrate how preparation for such revision might proceed. (Of course, this revision will capitalize on the experiment which permits comparison of experimental and control decisions. In the future, all decisions will be guidelines produced and revision will be based on analysis of the performance of defendants only within the framework of the guidelines.)

Table 8.1 summarizes key evaluative data for guidelines cells in which sufficiently large numbers of defendants fell during the study to permit meaningful analyses. For each of the cells, data relating to the use of ROR, pretrial detention, FTAs or rearrests among released defendants and the frequency with which these cases were decided as exceptions (where decisions were made outside of the guidelines) were collected. The percentages recorded for guidelines defendants in these categories of information were then compared with those associated with nonguidelines or control defendants in the study.

Figure 8.1 Preliminary revised guidelines format

Date | Log # | Name of Defendant | Police Photo # | Calculated by

Bail Guidelines Judicial Work Sheet

	LEAST SERIOUS CHARGES ····· MOST SERIOUS CHARGES													
LOWEST RISK OF FAILURE TO APPEAR AND REARREST	ROR 01*	ROR 06	ROR 11	ROR 16	ROR 21	ROR 26	ROR 31	ROR-$1,500 36	ROR-$1,500 41	$800-$3,000 46	$1,000-$3,000 51	$2,000-$7,500 56	I (+19 to +13)	
	ROR 02	ROR 07	ROR 12	ROR 17	ROR 22	ROR 27	ROR	ROR-$1,500 37	ROR-$1,500 42	$800-$3,000 47	$1,000-$3,000 52	$2,000-$7,500 57	II (+12 to +10)	
	ROR 03	ROR 08	ROR 13	ROR 18	ROR 23	ROR 28	ROR-$1,500 33	ROR-$1,500 38	$500-$1,500 43	$1,000-$3,000 48	$1,000-$3,000 53	$2,000-$7,500 58	III (+9 ex-actly)	
GREATEST RISK OF FAILURE TO APPEAR AND REARREST	ROR 04	ROR 09	ROR 14	ROR-$1,000 19	ROR-$1,000 24	$500-$1,500 29	$500-$1,500 34	$500-$2,000 39	$800-$2,500 44	$1,000-$5,000 49	$1,000-$5,000 54	$2,500-$7,500 59	IV (+8 to +4)	
	ROR 05	ROR-$500 10	ROR-$1,000 15	$300-$1,000 20	$500-$1,000 25	$500-$1,500 30	$500-$2,000 35	$500-$2,000 40	$800-$3,000 45	$1,500-$5,000 50	$1,500-$5,000 55	$3,000-$10,000 60	V (+3 to -13)	
	1	2	3	4	5	6	7	8	9	10	11	12	(Score) Points	RISK

Charge Severity Dimension—Charge Levels

Risk Severity Dimension—Risk Groups

	"n" negative	"n" positive
CONSTANT		4
crim. categ.		
arrests		
cr. + arrs.		
pend'g chgs.		
FTA's		
age of def't		
age + FTA's		
comm'ty ties		
Col. Total		
Subtract "n" (if smaller)	0	
TOTAL POSITIVE		

(*Nos. & ltrs. for coding purposes)

Selected Guidelines Range: **Actual Decision:**

☐ ROR ☐ _____ (amount)

IF OUTSIDE GUIDELINES, CHECK REASON BELOW:

A* ☐ B ☐ C ☐ D ☐ E ☐ N/A N/A F ☐

REASONS

- (GOOD) ..... (VERY UNLIKELY) ..... Sponsor at Prel. Arr. ..... VERSUS ..... (POOR) (LIKELY) Prosecution Will Be Withdrawn ..... VERSUS ..... Will Be Convicted (LIKELY)
- ..... Physical or Mental) Health Concerns ..... (LIKELY)
- ..... Court Room Demeanor of Defendant .....
- ..... Interference With Witness(es) ..... (LIKELY)
- ..... Cause Guardian to be Notified of Arrest
- POSSIBILITY of Mandatory Sentence .....
- CURRENT/OUTSTANDING Warrants/Detainers/Wanted Cards .....
- ..... OTHER ..... (Show REASON to Right)

IF YOU GO BELOW THE GUIDELINES AMOUNT—SHOW REASON: [DEPARTING FROM GUIDELINES BY USING A LOWER FIGURE (ROR, or lower financial bail, than in the guidelines decision) CHECK THE APPLICABLE BOX(ES) ACROSS TO THE LEFT]:

..... (Indicate DIRECTION OF DEPARTURE) .....

[DEPARTING FROM GUIDELINES BY USING A HIGHER BAIL AMOUNT (money bail instead of ROR, or a greater money amount than within guidelines) CHECK BOX(ES) TO RIGHT]:

IF YOU GO ABOVE THE GUIDELINES AMOUNT—SHOW REASON: ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Guidelines Decision By _____ J.

Table 8.1 Cell-specific comparison of bail decisions and outcomes for experimental and control defendants

Selected[a] Cell	Suggested guidelines range	Actual experimental decision					Actual control decisions					Percent of decisions departing[c] from guidelines
		(N)[b]	% ROR	% Det.	% FTA	% Rearrest	(N)[b]	% ROR	% Det.	% FTA	% Rearrest	
1	ROR	29	93	0	3	7	31	97	0	0	0	
2	ROR	42	91	0	7	7	60	88	0	3	7	
19	ROR-$1,000	23	52	26	15	10	26	50	23	5	9	
20	$300-$1,000	21	29	33	18	0	34	27	38	31	15	29
22	ROR	42	86	7	5	3	20	65	10	5	5	
23	ROR	20	85	10	11	6	20	60	15	16	15	
24	ROR	23	48	22	26	16	23	35	22	22	22	
31	ROR	30	70	3	3	0	33	36	6	3	6	30
33	ROR-$1,500	49	51	18	10	4	54	56	9	11	4	
34	$500-$1,500	29	21	38	20	13	39	41	26	21	18	28
35	$500-$2,000	54	15	52	28	30	59	22	44	11	18	
47	$800-$3,000	37	35	14	6	0	24	38	21	0	10	43
48	$1,000-$3,000	22	36	36	18	6	23	44	35	9	9	59
60	$3,000-$10,000	20	0	85	13	13	30	0	87	11	0	35

[a]Selected cells were chosen based on cells with sufficient n's for comparison between experimental and control defendants (at least 20 cases per cell). The cells are numbered based on the preliminary revised guidelines matrix composed of 60 cells. See Figure 8.1.

[b]The n is based on the number of cases of defendants falling within the given cells for either experimental or control defendants.

[c]When the rates of departures among experimental judges exceeded the base rate of exceptions -- about 24 percent -- they are noted. Otherwise decisions for defendants within given cells departed from the suggested ranges at a lesser rate.

Table 8.2 can be read as a simple summary of the treatment and outcomes of defendants processed by experimental judges on a cell by cell basis. When the use of ROR, for example, was roughly comparable for defendants under both bail approaches in a given cell, a (0) or "no-difference" was noted. When the percentage under guidelines was notably higher, a (+) was noted; and when the percentage under guidelines was notably lower, a (-) was assigned. For example, in cell 1 (see Figure 8.2) we see that guidelines-processed defendants were given ROR by experimental judges at roughly the same rate, were detained at roughly the same rate, and failed to appear and were rearrested at roughly similar rates when compared with nonguidelines-processed defendants. We might conclude that the guidelines approach did not differ qualitatively from the nonguidelines approach for defendants in this category.

Cell-by-Cell Summary and Recommendations for Revisions

Consideration of the data presented in Tables 8.1 and 8.2 might produce the following summary comments and recommendations:

Cells Where Use of Guidelines Produced a Positive Effect

Cell 20: The levels of ROR and pretrial detention were comparable among experimental and control defendants. The median cash bail for defendants not receiving ROR was nearly twice as high (at $960) among control defendants than among experimental defendants (at $550). FTAs and rearrests were notably lower under the guidelines (experimental) approach. Recommendation: Given the better results of the experimental defendants, judges should be strongly urged to comply with the guidelines range of $300-$1,000.

Cells 22, 24 and 31: Experimental judges employed ROR noticeably more frequently than their control counterparts in these cells and cash bail was set at lower levels. Yet, the same level of detention was achieved and equally low FTA and rearrest rates resulted. Recommendation: Judges should be urged to comply with the suggested guidelines approaches for defendants with characteristics placing them in these categories.

Cell 23: In this cell as well, experimental judges used substantially more ROR/SOB bail than control judges, achieving a similar rate of pretrial detention. The result was a similar (although slightly lower) FTA rate among guidelines defendants and a rearrest rate less than half that of control defendants. Recommendation: Judges should be urged strongly to favor the guidelines approach.

Cell 47: Experimental defendants received ROR at about the same rate and were detained at a rate similar to control defendants. For defendants not receiving ROR or unsecured bail, cash bails were notably higher under the control approach. Given the results--that FTA rates among guidelines defendants were comparably low and that rearrest rates were noticeably lower--it

Table 8.2 Analysis of selected guidelines cells: differences resulting from comparison of guidelines-produced decisions (experimentals) to nonguidelines bail decisions (controls) and outcomes

NOTE: 0 indicates approximate similarity between guidelines and nonguidelines decisions
+ indicates noticeably higher percentage among guidelines-produced decisions
– indicates noticeably lower percentage among guidelines-produced decisions

Selected cells	Decision Characteristics				
	ROR	Detention	FTA	Rearrest	Departures greater than 25%
1	0	0	0	0	
2	0	0	0	0	
19	0	0	+	0	
20	0	0	–	–	29
22	+	0	0	0	
23	+	0	0	–	
24	+	0	0	0	
31	+	0	0	0	30
33	0	+	0	0	
34	–	+	0	0	28
35	0	0	+	+	
47	0	0	0	–	43
48	0	0	+	0	59
60	0	0	0	+	35

appears that the main difference between the two approaches is unnecessarily higher cash bails among control defendants. Recommendation: Judges should be urged strongly to comply with the specified guidelines range in this cell.

Cells Where Use of Guidelines Produced a Negative Effect

Cells 19, 48: Defendants in these categories received ROR and were detained at comparable rates under each approach. Although the rates of rearrest were comparable, the FTA rates were noticeably higher under the guidelines bail approach. The key difference may be in the lower levels of cash bail used in non-ROR cases by experimental judges. Recommendation: The levels of bail in non-ROR cases be raised in these guidelines cells to better reflect control judge practices. Specifically, the guidelines range in Cell 19 could be adjusted to range from ROR to $1,500, while the range in Cell 48 could be adjusted to between $1,000 and $4,000.

Cell 33: Guidelines judges assigned ROR at rates similar to nonguidelines judges, but produced a noticeably higher rate of pretrial detention with only equal results in terms of FTAs and rearrests. The median bail levels in non-ROR cases were similar under the two bail approaches. Recommendations: The question here is to determine a method for lowering the use of pretrial detention under the guidelines approach because it is above the normal level (represented by the control judges). Two methods appear logical: lowering the higher cash bail range posited under guidelines, and/or development of a bail alternative such as conditional release in this category. We recommend the former approach lowering the upper bail range to $1,000.

Cell 34: In this cell, guidelines judges have used ROR noteably less frequently, have raised the use of pretrial detention and have achieved only comparable FTA and rearrest results. Recommendation: Because the guidelines approach has substantially increased the onerousness of bail (by halving the use of ROR and seriously increasing detention compared to the nonguidelines approach) to no practical gain in FTA and rearrest rates, the guidelines ranges should be modified downward to encourage greater use of ROR. Thus, we would recommend a range from ROR to $1,500.

Cell 35: Experimental defendants in this category received ROR about as often and were detained at roughly the same rate as control defendants. However, the FTA and rearrest rates were much higher. The main difference between the two approaches seems to be in the level of bail set in non-ROR cases: experimental defendants had median bails of $800 compared to $2,500 for control defendants. Recommendation: We recommend that the upper range of bail specified by the guidelines for defendants falling in this category be raised to $2,500.

Cell 60: Both approaches, were quite similar in their scarce use of ROR and their predominant use of pretrial detention. Both showed comparably low rates of FTA, but experimental defendants were rearrested at a higher rate. Recommendation: Interpretation of the results in this cell need to be viewed with extreme caution due to the small number of defendants who secured release at all. In fact, the difference in rearrest rates may be an artifact of the small number of cases. Because the bail approaches are so similar (both median bails are near $10,000), we would recommend no change in the guidelines.

(Note: Cells 1 and 2 are not discussed because they are so similar in their characteristics and results that neither a positive nor negative effect can be discerned.)

Other Factors Contributing to Revision of the Guidelines

Although analysis of bail decisions and the outcomes of those decisions under guidelines (in terms of detention, FTA and rearrest) forms the principal basis for periodic modification of the guidelines, other policy concerns may be taken into consideration as well. One important source of feedback, of course, may be the perceptions of the judges that have been using the guidelines, specifically as those perceptions relate to cells of the decision matrix showing high rates of disagreement. (See, for example, cells 47 and 48 in Tables 8.1 and 8.2.) A high rate of exception-taking should signal an important area for re-evaluation of policy: Are the guidelines "right" and should the judges be encouraged to follow them more consistently? Or, does the high rate of disagreement demonstrate an area where the guidelines are "off target" and where the exception-taking instinct of the judges should be taken into account in a reformulation of decision ranges? Examination of the reasons noted by the judges who have taken exception to the guidelines in specific categories may help in the interpretation of the data. It is important that decisions to modify the guidelines, though responding to feedback by the decisionmakers, be linked closely to examination of actual data--whether relating to bail, pretrial detention or the performance of defendants on pretrial release.

A second factor that ought to guide revision in this early stage is the finding that the risk dimension of the guidelines did not exercise the level of influence in bail decisions that had been hoped for. One analysis (see Appendix C) suggests the possibility that this weakness was due to a flaw in the design of the decision matrix: the risk dimension was prevented from playing a more important role because the recommended bail ranges did not vary forcefully enough from low to high risk categories within each severity level. To put it simply, the recommended ranges should have varied as distinctly according to risk as they did according to charge severity; they did not.

Figure 8.2 offers an illustration of what revision of the Philadelphia bail guidelines might resemble after taking into account each of the kinds of concerns described above. (Note that the cells with cross-hatching indicate categories in which the guidelines approach excelled notably and thus are meant to emphasize continued compliance.)

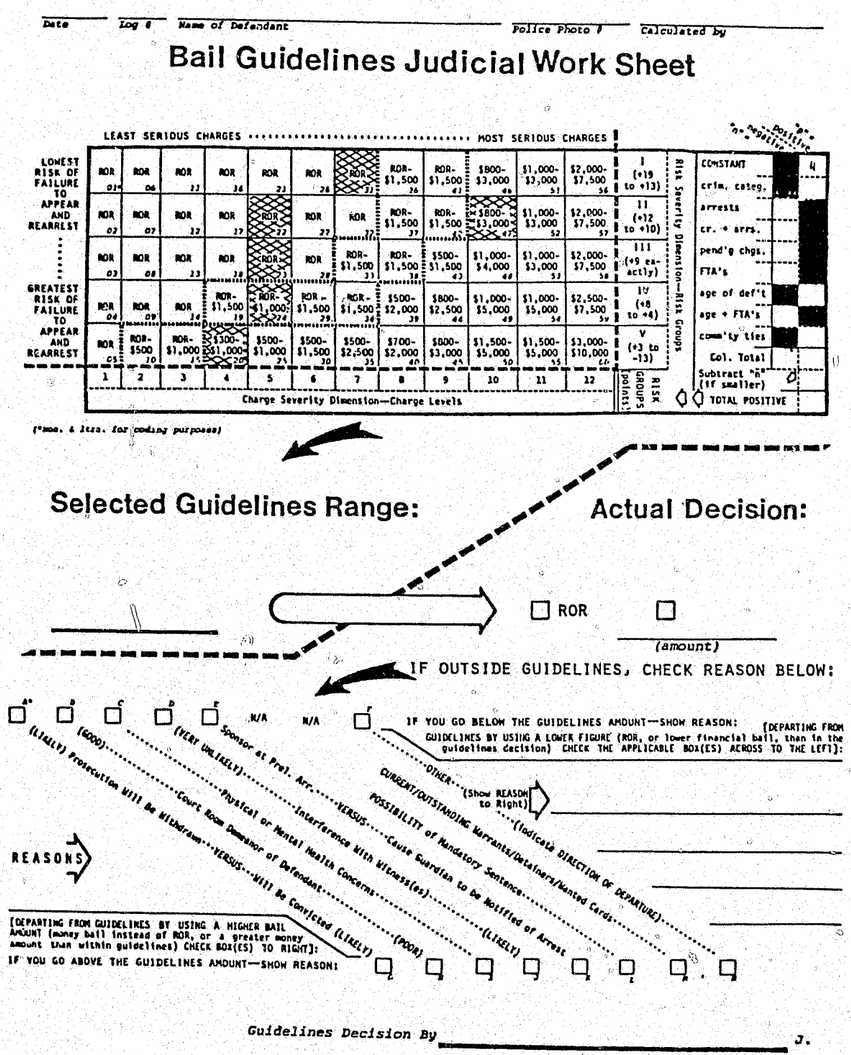
Conclusion: Untested Assumptions About Bail

Finally, it is important to acknowledge certain of the limitations of the guidelines perspective as it is applied to bail. First, and perhaps most significantly, in attempting to develop a practical decision resource for judges who decide bail, we have side-stepped entirely questions about the utility of cash bail. The real deterrent value of cash as a bail option has been debated for decades (e.g., Foote, 1954; NAPSA, 1978) but rarely researched (Gottfredson and Goldkamp, 1984). Some critics have argued that the deterrent value of bail has never been demonstrated and that, therefore the detention decision should be made directly to distance itself from the unfair side-effects of money bail--perhaps after the early Canadian reform model (Solberg, 1977), for example. Although we will not go into this debate here, nevertheless, we do wish to point out that the outcome of that debate could have important implications for the development of bail guidelines (not to mention the conduct of bail in its entirety). Certainly, to the extent that revision of bail guidelines limits itself to raising or lowering the presumptive cash bail ranges and fails to consider non-cash alternatives, doubts about the deterrent effect of cash bail do pose weighty questions for guidelines.

We might therefore argue that revision of the bail guidelines should eventually come to grips with the questions that have been raised about cash as the dominant bail option and broaden the scope of decision options employed. A more developed version of bail guidelines might build in suggestions relating to bail alternatives such as conditional release, supervised release or the use of bail sponsors.

The aim of this discussion has not been to answer these questions but rather to raise them. We have argued that the feedback and modification feature of the guidelines allows revision to occur on a periodic basis--based on relevant concerns, such as the use of ROR, pretrial detention and defendant failure rates, perceptions of the judges, and broader analysis relating to the weakness of the risk dimension. This feature is fundamentally important because it permits step-by-step, fine-tuning of the guidelines until the "first-draft" version piloted in the Philadelphia experiment can be adjusted to address the full complexity of bail decisionmaking and its consequences.

Figure 8.2 Illustration of revision of bail guidelines



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Appendix A

DATA COLLECTION AND CODING PROCEDURES

Data collection procedures employed in the guidelines experiment paralled those developed for the feasibility study and described in Goldkamp, Gottfredson and Mitchell-Herzfeld (1981: Appendix A), with several important differences. First, although the sample of cases was selected on the basis of a stratified quota sampling design (again based on judge and charge seriousness--see Chapter Two), all judges sitting for the Municipal Court at the time were not utilized. Rather, 8 of the total of 22 Municipal Court judges were randomly selected to use guidelines (or to be "experimental" judges) and 8 were randomly selected to be nonguidelines (or "control" judges). This approach was employed because the objective was to use judges to randomize allocation of defendants to the two bail approaches rather than to permit a specific focus on the judges themselves as was accomplished in the previous study. It was determined that to succeed in the goal of randomization of defendants and to obtain a sample sufficiently large for comparative analyses of the kind planned only 16 judges would be required in the study.

A second major difference in the sampling approach was that the experiment undertook an ongoing or prospective data collection strategy, whereas data collection during the feasibility study was retrospective or post hoc. Thus data collection could not be completed until each of the 16 judges had accumulated 20 cases in each of the 6 strata of charge seriousness. Completion of the sample required approximately 14 months from January 1, 1981 to March 14, 1982.

A third difference related to the following up of defendants released under each of the approaches. Defendants who obtained release at any point prior to the disposition of their cases were followed for a period of 90 days to learn of possible FTAs or "rearrests" for crimes committed during the release period. Because of the time and expense involved in the prospective follow-up approach, the 120 day period adapted in the feasibility study was shortened to 90 days. In addition, an attempt was made to be more accurate in measuring the performance of defendants on release. For example, if it was observed that cases were concluded before the 90 day release period was over, the at risk period was shortened to encompass only the time the defendant was truly on pretrial release.

In other respects, data collection followed the procedures outlined in the report of the feasibility study quite closely. The interested reader should refer to the description of data collection procedures included in that report. The coding instructions manual and the coding form used in data collection during the guidelines experiment are included in this appendix.

Philadelphia Bail Guidelines Experiment: Coding Instructions

GENERAL INSTRUCTIONS:

The items of information on the coding sheet will be coded from six forms found in each defendant's files: POLICE REPORT, COURT REPORT - PRELIMINARY ARRAIGNMENT, PRETRIAL SERVICES DIVISION AND PHILADELPHIA COMMON PLEAS and MUNICIPAL COURTS (judge's summary form), PRE-ARRAIGNMENT INTERVIEW, SWORN STATEMENT, and EXTRACT OF CRIMINAL RECORD. The particular form from which each item is to be coded is clearly indicated on the coding sheet. The items of information follow the order in which they appear on the forms.

A number of forms contain information that is duplicative of that found on other forms. If a certain piece of information is missing from the form from which you are coding, check the other forms that also provide the information. The judge's summary form is a reduced version of the PRE-ARRAIGNMENT INTERVIEW form. The latter form is often not filled out for first offenders and offenders charged with less serious misdemeanors (you may see "abbreviated interview" or "see judge's form" written across the form). In these cases you may find some of the missing information on the police report, SWORN STATEMENT or EXTRACT OF CRIMINAL RECORD.

A piece of information may not always appear in the location on the form where it is expected that it would be written. Before you record a data item as missing, check to see if this information has been reported in another area of the form. Since each interviewer has a slightly different style of completing the interview forms, be careful not to come to hasty conclusions as to how items are generally coded. It is not possible to predict beforehand all the coding problems you may encounter, and so it will be necessary to develop rules to handle some problems as they arise. If you encounter a situation that is not covered by the coding rules, bring it to the attention of your supervisor.

SPECIAL INSTRUCTIONS:

For this study, there will also be a pink and yellow Bail Guidelines form which will be used in your coding. This form contains the basis information needed for selecting a file to be coded. The top of each pink Guidelines form should have the arrest date, log number, defendant's name, Police Photo number and the name of the ROR interviewer who prepared the form.

The ROR interviewer will indicate on the pink form: the charge severity level, the risk group number and the Bail Guidelines decision for each defendant. The yellow form is the interviewer's worksheet which is used to determine the Bail Guidelines information (on the pink form).

If an Experimental judge arraigned the defendant the bottom of the form will be completed. It will contain the judge's signature, his bail decision and his reason for departing from the guidelines if there was a departure.

Control judges do not see the Guidelines form or the bail decision. Therefore, their forms will only contain the judge's name on the bottom of the form.
The completed Guidelines forms have been checked for errors and placed in folders according to judge and stratum number.

Coding Procedure

After you have selected a judge and a stratum number, it is necessary to do the following before you begin coding:

1. All Guidelines forms should be in order according to date and then log number. If they are not in order, please put them in order.

2. Be sure that the case you are coding is the same as the one indicated on the Guidelines form. Compare arrest date, log number, and Police Photo number.

3. Compare judge's name on preliminary arraignment sheet and the Guidelines form. If the file indicates a different judge, the case may still be coded only when the correct judge is also in our study and the stratum you are coding is not yet completed for that judge. If the judge is not in our study, return the guidelines form to your supervisor and the file to the fileroom.

4. The following cases should not be coded:

   A. Murder cases
   B. Escape cases
   C. Priority cases (6 hr. arraignment)
   D. Cases discharged/dismissed at the preliminary arraignment.
   E. Cases that show open bench warrants, wanted cards, detainers or probation/parole violations (This does not include cases in which this information has been added by ROR after the case has arrived in the office. Check with the supervisor if it looks questionable).

   If any of the above problems are found, mark the reason for excluding the case on the pink form and return it to your supervisor. Return the file to the fileroom.

5. If, while coding a case, you find that the stratum number is incorrect on the Guidelines form, continue coding the case and put it in the correct stratum folder. If the stratum you are coding is already completed, show the case to the supervisor.

Item 01 Philadelphia Photo number

Code the Philadelphia photo number in the first six columns.

Item 02 — Number of suspects

First read the description of the offense written in the remarks section directly below the charge information. If no mention is made of how many offenders were involved, check to see if others were arrested with the defendant (around line 16).

Item 03 — Number of different offenses charged

Count the number of different offenses the defendant has been charged with (written on the police 50 and the police extract). If there is a discrepancy check the computer for the correct information.

Item 04-43 — Charges

Items 03-43 are to be coded from the charge information contained in the police report. Cross-check this information with that written on the COURT REPORT-PRELIMINARY ARRAIGNMENT form. First count the number of different offenses charged and enter the figure in Item 03. "Different" means that the offenses in question have different names, statute numbers or felony-misdemeanor classifications. Code items 04-43 in the table provided. Four items will be coded for each offense charged: statute number (or in the case of some drug offenses, police classification number), seriousness rank, whether or not the offense is an inchoate one (attempt, conspiracy or solicitation) and number of counts. The Index of Offenses lists all of the offenses that are likely to be encountered, by statue number, seriousness rank and in alphabetical order. The class and maximum penalty for each offense are provided and a personal harm/injury classifier has been assigned. The personal harm/injury classifier indicates whether or not the offense involves harm or injury to the person (0 = no, 1 = yes).

If there are not more than 10 different offenses charged, code the offenses in the order in which they appear on the police report. If more than 10 different offenses have been lodged against the defendant, the most serious 10 offenses will be coded in order of decreasing severity. The following rules will apply in determining the relative severity of offenses:

(1) Refer to the Index of Offenses for the seriousness rank for each offense. The higher

the seriousness rank, the more serious the offense.

(2) If multiple offenses have the same seriousness rank, offenses carrying the higher maximum sentence should be considered more serious. For example, Murder 2 is more serious than Murder 3 because its maximum penalty is life, while the maximum penalty for Murder 3 is 20 years.

(3) If multiple offenses have the same maximum penalty, crimes involving harm or injury to the person are to be considered more serious.

(4) If multiple offenses have the same maximum penalty and the same personal harm/injury classifier, select the offense appearing first on the police report.

Do not rely solely on the statue number to locate offenses in the Index of Offenses, since it is not always accurate. Also you will find that the first two digits of the statute number (18, 35, 40, 47, 72, 75) often do not appear on the police report.

Use the statue number as an additional descriptor of the offense to help you find the information that needs to be coded. If the offense cannot be found in the Index of Offenses, set the case aside, write down any information pertaining to the offense and give it to your supervisor. (If fewer than 10 offenses have been charged, leave the sections of the table that are not needed blank.)

Some offenses have subsections that have been assigned different seriousness ranks. For example, Simple Assault may have a seriousness rank of either 1 or 2 depending on whether or not the fight was mutually entered into. You can generally tell which of the subsections is being charged by the felony/misdemeanor class given to it on the police report. Thus, if "2701 Simple Assault M3" is written on the police report, the seriousness rank would be 1. If the felony/misdemeanor class has not been provided, check the description of the offense written below the charge information on the police report.

An attempt, conspiracy or solicitation to commit Murder or a felony 1 carries a maximum penalty of 10 years and has a seriousness rank of 5. An attempt, conspiracy or solicitation to commit any other offense has the same maximum penalty as the

completed offense and should be assigned the same seriousness rank. You will notice that in some cases 903 Conspiracy of 902 Solicitation is charged and there is no indication of which offense they apply to. Do not code the statute number for Conspiracy or Solicitation, but rather the statute number for the most serious offense charged. If Conspiracy or Solicitation is the only offense charged, you may have to refer to the description of the offense to determine what offense is the object of the conspiracy or solicitation. This situation should not arise with respect to attempts, but if it does the same rules will apply as for conspiracy and solicitation. A completed offense should be coded 0, attempt 1, conspiracy 2 and solicitation 3.

The number of counts may be indicated in two ways: the number of times the charge is listed and "cts" or counts accompanied by a number following the charge. To determine the number of the charge. To determine the number of counts, add together the number of counts for each listing of the charge. If the number of counts does not appear after the charge, assume there is only one count.

Example: 3701 Robbery F1 (2 cts)
3921 Theft M1
3701 Robbery F1
2702 Aggravated Assault M1
3921 Theft M1 (3 cts)

There are 3 counts of Robbery F1, 4 counts of Theft M1 and 1 count of Aggravated Assault M1.

Item 44 — Offense against person charged

Offense against person crimes are those which either threaten or cause harm or injury to a person, e.g. assault, kidnapping, robbery, murder, terroristic threats, etc., Personal crimes listed in the Index of Offenses have a personal harm/injury classifier of 1.

Item 45 — Most serious injury sustained by victim(s)

Assume the injury is serious if the police report says it is serious but makes no mention of whether or not the victim was hospitalized. If the victim received emergency treatment and was released, consider the injury minor. If the victim was raped but no mention of other injuries is stated, code - no injury.

Item 46 — Date of preliminary arraignment

If this date is missing, code the date that the PRE-ARRAIGNMENT INTERVIEW took place (line, 1, PRE-ARRAIGNMENT INTERVIEW form).

Item 47 — Shift

Generally, the correct shift will be written in on the preliminary arraignment sheet. If it is not, check the judge's calendar to see which shift "your" judge worked on that date.

Item 48 — Number of M.C. numbers

Count all MC number listed on preliminary arraignment sheet.

Items 49-55 — M.C. numbers

The M.C. number is an eight digit number that is assigned to each transcript (also referred to as case or bill). A transcript contains the charge or charges that pertain to one criminal act. For instance, if a defendant has committed one robbery, he may be charged with a number of different offenses in addition to robbery, such as theft and receiving stolen property. These offenses would generally be joined in one transcript, which would be given a M.C. number. The first two digits of the M.C. number refer to the year, the next two to the month (roughly speaking) and the last four are assigned consecutively to each case as it enters the system (starting with 0001 at the beginning of each month). Since zeroes are sometimes omitted from the M.C. number, it is necessary to add them. Thus, for example, 78-01-1 would become 78010001 (the hyphens are not coded). The M.C. numbers should be coded in the order in which they appear on the COURT REPORT-PRELIMINARY ARRAIGNMENT form. If there are fewer than 7 M.C. numbers, leave the items blank that are not needed.

Item 56 — Has "07," "97," "MCB," "SOB," or some other indication that financial bail has been posted been noted?

These may be written anywhere on the COURT REPORT-PRELIMINARY ARRAIGNMENT form. "07" and "97" are Data Processing Surety codes indicating the manner in which 10% cash bail was posted. "07" means that 10% cash bail deposit was posted by the defendant. "97" means that the 10% cash bail deposit was posted by a third party. Other methods

of posting financial bail include the following: sign-own-bail (SOB), corporate surety, bail funds, payment of full amount of bail, real estate bail, etc. MCB signifies "made cash bail"--the way in which bail was posted may not be specified. At time, more than one form may be billed out when multiple transcripts have been filed against a defendant. You may then have to look at each form to see if any of these indicators appear. If bail was not set (i.e. the defendant received ROR) code 8 (not applicable, ROR). If bail was set and none of the indicators in question are noted, code 0 (no).

Item 57 D.A. or police request high bail

This may be written anywhere on the COURT REPORT-PRELIMINARY ARRAIGNMENT form(s). If not found, code 0 (no).

Item 58 Judge

This should be listed on the preliminary arraignment. If it isn't, show the case to the supervisor.

Item 59 Preliminary arraignment disposition

In the event of multiple transcripts (M.C. numbers) for one defendant, the judge may dispose of each separately. Code the disposition that has the highest code number assigned to it. For example, if two transcripts have been filed against a defendant and the judge gives the defendant ROR on one transcript and 10% cash bail on the other, code 3 (10% cash bail). If one or more dispositions are given, one of which does not fit into any of the categories, code 7 (other) and list each of the dispositions. If more than one form has been filled out, you may then have to look at each form to determine the disposition for each transcript.

Item 60 Full amount of cash bail (not 10%)

The amount of cash bail may be written anywhere on the COURT REPORT-PRELIMINARY ARRAIGNMENT form. If two or more amounts of bail have been imposed, code the sum of them. Sometimes the 10% fee--the amount the defendant actually has to pay--is listed next to the amount set by the judge. For example, you might find: $1,500 and $153 encircled. $1,500 is the amount set by the judge and $153 is the amount the defendant must pay to be released. Since we are interested in the amount set by the judge, 001500 would be coded. Also, as mentioned above,

if there are multiple transcripts, more than one form may be filled out. Check each form to determine the amount of bail set for each transcript.

Item 61 Present address: Philadelphia

Code 1 (yes) if defendant lives in Philadelphia or in an area contiguous to Philadelphia (not more than 35 miles from Philadelphia). Camden, for example, is considered to be within the Philadelphia area.

Item 62 Phone

Code 1 (yes) if the defendant gave a phone number to ROR interviewer. Code 0 (no) if PRE-ARRAIGNMENT INTERVIEW FORM states no or a line is drawn through the question. If question is not marked off, code 9.

Item 63 Length of present residence

If "life" has been recorded, code the defendant's age converted into months. See PRE-ARRAIGNMENT INTERVIEW form, line 4, for age. If the defendant states a length of residence according to years, use the chart to convert years into months.

Item 64 Defendant's living arrangements

This information can be found in PRE-ARRAIGNMENT INTERVIEW form or on the judge's summary form.

Item 65 Marital status

If merely says "married," code 4 (civil marriage). Code 5 (common-law) only when noted.

Item 66 Present employment

Note designation for students, housewives, retired, disabled and prisoners.

Item 67 Wages (per week to nearest dollar)

Cross-check this figure with the information provided by the PRE-ARRAIGNMENT INTERVIEW, line 25, and the SWORN STATEMENT, line 5 (weekly take home pay).

Item 68 — Defendant is on welfare (D.P.A.)

Cross-check with PRE-ARRAIGNMENT INTERVIEW form. If defendant has a D.P.A. number (line 6), he is receiving public assistance.

Item 69 — Race of defendant

Line 4. Cross-check this information with that provided by police report or EXTRACT OF CRIMINAL RECORD.

Item 70 — Sex of defendant

Line 4. Cross-check this information with that provided by police report or EXTRACT OF CRIMINAL RECORD.

Item 71 — Birthdate of defendant

Line 4. If month and day are missing but year is available, code 9999 and then year. If only day is missing code month, then 99 and year in the last two digits. Cross-check with police report or EXTRACT OF CRIMINAL RECORD.

Item 72 — Motor vehicle owned

Line 32. If blank, refer to SWORN STATEMENT.

Item 73 — Utilities

In the margins, you may find written in, "utilities in own name: Y/N." If this is not found, code 9.

Item 74 — Number of prior arrests

Each date on the EXTRACT represents one arrest, although a number of offenses may have been charged. The last entry on the form is the current arrest. To determine the number of prior arrests, count the number of dates appearing on the form. Do not include the present arrest, FTA's, contempt of court, absconder, violation of probation/parole, or juvenile cases.

Item 75 — Number of recent prior arrests (within past 3 years of this case

Follow directions for above item, except count only arrests within past 3 years.

Item 76 — Number of prior arrests for serious personal offenses

Count the number of times the defendant has been arrested for any of the following offenses. Do not count the number of times the defendant has been charged with these offenses, but rather the arrests that have involved serious personal charges. Do not consider the present arrest.

Murder
Voluntary Manslaughter
Involuntary Deviate Sexual Intercourse
Rape
Statutory Rape
Robbery
Kidnapping
Aggravated Assault
Assault by Prisoner or Life Prisoner

Item 77 — Number of prior arrests for serious property offenses

Count the number of times the defendant has been arrested for (not charged with) any of the following offenses: Do not consider the present arrest.

Arson
Causing or Risking a Catastrophe
Burglary

Item 78 — Number of prior arrests for drug offenses

Count the number of times the defendant has been arrested for (not charged with) any drug offense. Do not consider the present arrest.

Item 79 — Number of prior arrests for weapon offenses

Count the number of times defendant has been arrested for (not charged with) weapon offenses. Do not consider present arrest.

Item 80 — Prior convictions

The year and charge of each conviction are listed. Count the number of mentions of convictions to code this item. If this information is missing, do not rely on the EXTRACT OF CRIMINAL RECORD.

Item 81 — Prior convictions for serious personal offenses

The following offenses are to be considered serious for the purpose of this item:

Murder
Voluntary Manslaughter
Involuntary Deviate Sexual Intercourse
Rape
Statutory Rape
Robbery
Kidnapping
Aggravated Assault
Assault by Prisoner or Life Prisoner
Assault with Intent to Kill

Item 82 — Prior convictions for serious property offenses

Count the number of times the defendant has been convicted of any of the following offenses:

Arson
Causing or Risking a Catastrophe
Burglary

Item 83 — Prior convictions for drug offenses

Count the number of times the defendant has been convicted of any drug offense.

Item 84 — Prior convictions for weapons offenses

Count the number of times the defendant has been convicted of any weapon offense.

Item 85 — Number of prior felony convictions

Code 99 for "not known." If this section has not been filled in, it generally means that there is no prior record rather than the data is missing. Check the judge's summary form to make sure this is the case. Do not rely on EXTRACT OF CRIMINAL RECORD. "NPR" indicates no prior record; "NRF" means no record found and "1st" means no record found and "1st" means first arrest.

Item 86 — Number of prior misdemeanor convictions

Code 99 for "not known. If this section has not been filled in, it generally means that there is no prior record rather than the data is missing. Check the judge's summary form to make sure this is the case. Do not rely on EXTRACT OF CRIMINAL RECORD. "NPR" indicates no prior record; "NRF" means no record found and "1st" means first arrest.

Item 87 — On probation, parole or work release

This information is found on the criminal extract under convictions. To find out if a defendant is currently on parole/probation count the length of parole/probation expired from the date of conviction up to the present arrest date. Cross-check this information with that found on the judge's summary form.

Item 88 — Record of appearance at prior court proceedings (number of FTA's)

The month and year of each FTA are listed. Count the number of dates to determine the number of FTA's. If this information is missing, do not rely on the EXTRACT OF CRIMINAL RECORD.

Item 89 — Outstanding warrants or detainers

If any bench warrants are found, "outstanding bench warrant issued (date)" is written in this section. The type of warrant (MC, CP, Private, Citation) is also noted. This section is also used to indicate that wanted cards were filed by the Probation Department. Count the number of mentions of warrants and detainers to code this item. If this information is missing do not rely on the EXTRACT OF CRIMINAL RECORD.

Item 90 — Other pending charges

In this section, the month and year of arrest and the most serious charge are listed for each open case. The next court date for the case may also be provided. Count the number of mentions of open cases and code appropriately. If this information is missing, do not rely on the EXTRACT OF CRIMINAL RECORD.

Item 91 — Were certain sections of the PRE-ARRAIGNMENT INTERVIEW form not filled out?

Look for "see judge's abbreviated interview," "interview waived" or "refused interview."

Item 92 — Recommendation

Locate near the bottom of the judge's summary form.

Item 93 — Date of release

This can be found by checking the computer for the date bail was posted. If there is a bail amount,

but no bail date or bail code, then the defendant was not released. If the defendant was given ROR or SOB, then the release date is automatically the same date as the preliminary arraignment date.

Item 94 — Failed to appear within 90 days

Check the WSU (Warrant Service Unit) docket under the defendant's photo number. Be sure to count only the FTA's which occurred after the preliminary arraignment date and before the 90 day period ended.

Item 95 — How many FTA's failed to appear within 90 days

Check the SWU (Warrant Service Unit) docket under the defendant's photo number. Be sure to count only the FTA's which occurred after the preliminary arraignment date and before the 90 day period ended.

Item 96 — Date of first FTA

Check the WSU (Warrant Service Unit) docket under the defendant's photo number. Be sure to count only the FTA's which occurred after the preliminary arraignment date and before the 90 day period ended.

Item 97 — Rearrested within 90 days of release

Check for this information on the computer using both the defendant's photo number and also his name.

Under PP01 - you will find all open and disposed cases for the defendant. Any MC case which has a more recent arrest date or a high number than the case you are coding may be considered a new arrest.

Item 98 — Date of rearrest

The (first) rearrest case must be punched up on the computer to get this information.

Item 99 — Most serious offense for which rearrested

The (first) rearrest case must be punched up on the computer to get this information.

Item 100 — Case disposed of within 30 days of arrest

Check computer under PP02 . . . . for this information. Enter second page of case to see what full

disposition was. The date the case was disposed in located in lower left hand corner of page one under Sentence date or Trial date. Note: Held for Court (061) is not a disposition.

Item 101 — Date case was disposed

Check computer under PP02 . . . . for this information. Enter second page of case to see what full disposition was. The date the case was disposed in located in lower left hand corner of page one under Sentence date or Trial date. Note: Held for Court (061) is not a disposition.

Item 102 — Did failure occur after this case was disposed

Compare the dates for question #96 and #101.

Item 103 — Date of admission

If a defendant was given a cash bail and was not released on the same date as the preliminary arraignment date (see #13) then you may assure that the defendant was admitted to prison. In this case use the preliminary arraignment date as the admission date. If the defendant was given ROR or SOB at the preliminary arraignment, then he probably was not admitted to prison.

Item 104 — Seriousness level

Check the offense codes written on the first page of the coding form (Item 04-43). The highest seriousness rank listed is the seriousness level for this case.

Item 105 — Charge severity

Charged severity level is found on the pink Bail Guidelines form in a vertical column on the left side. The level will be circled according to the charge with the highest number (1 to 15). Note: If the person filling out the pink form circle the wrong level for an Experimental Judge and the judge gave the wrong bail to the defendant, then code this question with the charge severity level that the judge was given. If the wrong severity level was done for a Control Judge or the bail amount is the same as the correct severity level, then code

this question with the correct charge severity level (not the one done by the interviewer).

Item 106 Risk group

The risk group is also found on the pink Bail Guidelines form, across the top of the form from lefe to right. (1 to 5) "Note: If there are errors in this, follow the instructions for coding found in Item 105.

Item 107 Does decision depart from guidelines

If an Experimental Judge used the Guidelines form, his bail decision will be noted at the bottom of the pink form. If a Control Judge is noted on the form, then 8 will be the correct code.

Item 108 Reason for departure

Experimental Judges should note their reasons for departure from the bail guidelines. Use the appropriate codes.

Item 109 Did interviewer make an error which affected the judge's bail decision

If the interviewer made an error but the bail was still in the same category or it is a Control judge's case, the answer will be no (0).

If there was an error and the judge gave the defendant an incorrect bail amount code either 1 (yes, charge severity) or 2 (yes, risk group) depending on where the error was made.

CONTINUED

2 OF 3

CARD ONE

Sequence number (1-4) | | | | 1 | Card number

01 Philadelphia photo number

(5-10) | | | | | | |

02 Number of suspects

(11-12) | |

01 = defendant as lone suspect
02-96 = number of suspects (including defendant)
97 = multiple suspects, number unclear
99 = missing value

140

CHARGES

See coding manual for directions on how to code items 03-43

03 Number of different offenses charged

(13-14) | |

01-96 = number of different offenses charged
99 = missing value

*0 = completed offense
1 = attempt
2 = conspiracy
3 = solicitation

Items 04-43 are to be coded in the table below. If there are fewer than 10 offenses charged, leave sections of the table that are not needed blank.

Item	Column	Statute number	Seriousness rank	Attempt, Conspir., Solicit.,*	Number of Counts	Description if needed
04-07 First offense	(15-24)					
08-11 Second offense	(25-34)					
12-15 Third offense	(35-44)					
16-19 Fourth offense	(45-54)					
20-23 Fifth offense	(55-64)					
24-27 Sixth offense	(65-74)					

CARD TWO

Sequence number (1-4) | | | | 2 | Card number

Item	Column	Statute number	Seriousness rank	Attempt, Conspir., Solicit.,*	Number of Counts	Description if needed
28-31 Seventh offense	(5-14)					
32-35 Eighth offense	(15-24)					
36-39 Ninth offense	(25-34)					
40-43 Tenth offense	(35-44)					

44 Offense against person charged

(45) ☐

0 = no
1 = yes
9 = missing value

45 Most serious injury sustained by victim(s)

(46) ☐

0 = no injury
1 = minor injury or treated and released
2 = serious injury or hospitalized
3 = death
9 = missing value

COURT IDENTIFICATION

46 Date of preliminary arraignment

month day year

(47-52) ☐☐☐☐☐☐

999999 = missing value

47 Shift

(53) ☐

1 = 8-4
2 = 4-12
3 = 12-8
9 = missing value

48 Number of M.C. numbers

(54-55) ☐☐

01-96 = Number of M.C. numbers
99 = missing value

M.C. numbers (items 49-55)

Items 49-55 refer to the M.C. or case numbers. If missing, code 99999999. If there are fewer than 7 M.C. numbers, leave items blank that are not needed.

49 M.C. Number (first case)

(56-63) ☐☐☐☐☐☐☐☐

50 M.C. number (second case)

(64-71) ☐☐☐☐☐☐☐☐

51 M.C. number (third case)

(72-79) ☐☐☐☐☐☐☐☐

CARD THREE

Sequence number Card number

(1-4) ☐☐☐3

52 M.C. number (fourth case)

(5-12) ☐☐☐☐☐☐☐☐

53 M.C. number (fifth case)

(13-20) ☐☐☐☐☐☐☐☐

54 M.C. number (sixth case)

(21-28) ☐☐☐☐☐☐☐☐

55 M.C. number (seventh case)

(29-36) ☐☐☐☐☐☐☐☐

56 Has 07, 97, MCB, SOB, or some other indication that financial bail has been posted been noted?

(37) ☐

0 = no
1 = yes - MCB, 07 (10% bail posted by defendant)
2 = yes - MCB, 97 (10% bail posted by third party)
3 = yes - MCB, unspecified
4 = yes - SOB (signed own bail)
5 = yes - corporate surety
6 = yes - bail funds
7 = yes - other (specify_____)
8 = not applicable, ROR

57 D.A. or police request high bail

(38) ☐

0 = no
1 = yes - D.A.
2 = yes - police
3 = yes - both

58 Judge

(39-40) ☐☐

01 =
02 =
03 =
04 =
05 =
06 =
07 =
08 =
09 =
10 =
11 =
12 =
13 =
14 =
15 =
16 =

59 Preliminary arraignment disposition
(41) ☐

1 = ROR
2 = SOB (signed own bail)
3 = 10% cash bail
7 = other (specify_____)

60 Full amount of cash bail
(42-47) ☐☐☐.☐☐☐

000001-999996 = amount of cash bail
999998 = not applicable, ROR/SOB
999999 = missing value

COMMUNITY TIES/DEMOGRAPHIC CHARACTERISTICS

61 Present address: Philadelphia
(48) ☐

0 = no
1 = yes
9 = missing value

62 Phone
(49) ☐

0 = no
1 = yes
9 = missing value

63 Length of present residence
(50-52) ☐☐☐

(Code in months. Round to nearest month)
001-996 = number of months
999 = missing value

64 Defendant's living arrangements
(53) ☐

0 = alone
1 = relatives/friends
2 = spouse/child
9 = missing value

65 Marital status
(54) ☐

1 = never married (N)
2 = widowed (W)
3 = divorced (D)
4 = civil marriage (C)
5 = common law (CL)
7 = other (specify_____)
9 = missing value

66 Present employment
(55) ☐

0 = not employed
1 = employed
2 = not employed, housewife
3 = not employed, student
4 = not employed, retired
5 = not employed, physically or mentally disabled
6 = not employed, prisoner
7 = not employed, other (specify_____)
9 = missing value

67 Wages (per week to nearest dollar)
(56-59) ☐☐☐.☐

0000 = not employed
0001-9996 = number of dollars
9997 = other (specify_____)
9999 = missing value

68 Defendant is on welfare (D.P.A.)
(60) ☐

0 = no
1 = yes
9 = missing value

69 Race of defendant
(61) ☐

1 = black (B)
2 = white (W)
3 = Hispanic (Puerto Rican)
7 = other (specify_____)
9 = missing value

70 Sex of defendant
(62) ☐

0 = female (F)
1 = male (M)
9 = missing value

71 Birthdate of defendant
month day year
(63-68) ☐☐☐☐☐☐

999999 = missing value

72 Motor vehicle owned
(69) ☐

0 = no
1 = yes
9 = missing value

73 Utilities
(70) ☐

0 = no
1 = yes
9 = missing value

PRIOR CRIMINAL RECORD

74 Number of prior arrests

(71-72) ☐☐

00-96 = number of prior arrests
97 = noted, but number unclear
99 = missing value

75 Number of recent prior arrests (within past three years of this case)

(73-74) ☐☐

00-96 = number of recent prior arrests
97 = noted, but number unclear
99 = missing value

76 Number of prior arrests for serious personal offenses

(75-76) ☐☐

(See coding manual for listing of serious personal offense)
00-96 = number of prior arrests for serious personal offenses
97 = noted, but number unclear
99 = missing value

77 Number of prior arrests for serious property offenses

(77-78) ☐☐

(See coding manual for listing of serious property offenses)
00-96 = number of prior arrests for serious property offenses
97 = noted, but number unclear
99 = missing value

78 Number of prior arrests for drug offenses

(79-80) ☐☐

00-96 = number of prior arrests for drug offenses
97 = noted, but number unclear
99 = missing value

CARD FOUR

Sequence number (1-4) ☐☐☐ Card number ☐4

79 Number of prior arrests for weapon offenses

(5-6) ☐☐

(See coding manual for listing of weapon offenses)
00-96 = number of prior arrests for weapon offenses
97 = noted, but number unclear
99 = missing value

80 Number of prior convictions

(7-8) ☐☐

00-96 = number of prior convictions
97 = noted, but number unclear
99 = missing value

81 Number of prior convictions for serious personal offenses

(9-10) ☐☐

(See coding manual for listing of serious personal offenses)
00-96 = number of prior convictions for serious personal offenses
97 = noted, but number unclear
99 = missing value

82 Number of prior convictions for serious property offenses

(11-12) ☐☐

(See coding manual for listing of serious property offenses)
00-96 = number of prior convictions for serious property offenses
97 = noted, but number unclear
99 = missing value

83 Number of prior convictions for drug offenses

(13-14) ☐☐

00-96 = number of prior convictions for drug offenses
97 = noted, but number unclear
99 = missing value

84 Number of prior convictions for weapons offenses

(15-16) ☐☐

00-96 = number of prior convictions for weapons offenses
97 = noted, but number unclear
99 = missing value

85 Number of prior felony convictions

(17-18) ☐☐

00-96 = number of prior felony conviction
97 = noted, but number unclear
99 = missing value

86 Number of prior misdemeanor convictions
(19-20) ☐☐

00-96 = number of prior misdemeanor convictions
97 = noted, but number unclear
99 = missing value

87 On probation, parole or work release
(21) ☐

0 = no
1 = yes
9 = missing value

88 Record of appearance at prior court proceedings (number of FTA's)
(22-23) ☐☐

00-96 = number of FTA's
97 = noted, but number unclear
99 = missing value

89 Outstanding warrants or detainers
(24-25) ☐☐

00-96 = number of outstanding warrants or detainers
97 = noted, but number unclear
99 = missing value

90 Other pending charges
(26-27) ☐☐

00-96 = number of other pending charges
97 = noted, but number unclear
99 = missing value

91 Were sections of the PRE-ARRAIGNMENT INTERVIEW form not filled out?
(28) ☐

0 = no
1 = yes, marked "see judge's abbreviated interview"
2 = yes, marked "interview waived" or "refused"
3 = yes, only partially completed, no reason given
4 = yes, other (specify_____)

92 Recommendation
(29) ☐

0 = no, does not recommend release on recognizance
1 = yes, recommends release on recognizance
9 = missing value

93 Date of release
(30-35) ☐☐☐☐☐☐

999997 = released, date unknown
999998 = not released
999999 = missing value

94 Failed to appear within 90 days
(36) ☐

0 = no
1 = yes
8 = not released
9 = missing value

95 Rearrested within 90 days of release
(37) ☐

0 = no
1 = yes
8 = not released
9 = missing value

96 Most serious offense for which rearrested
(38-39) ☐☐

01 = miscellaneous
02 = public order
03 = weapons
04 = public administration
05 = other personal
06 = other property
07 = drugs--manufacture./ delivery, sale
08 = aggravated assault
09 = burglary
10 = robbery
11 = serious personal
97 = not released
98 = not rearrested
99 = missing value

97 Case dismissed within 30 days of arrest
(40) ☐

0 = no
1 = yes
9 = missing value

98 Date of admission
(41-46) ☐☐☐☐☐☐

99 Seriousness level (1-6)
(47) ☐

100 Charge Severity (1-15)
(48-49) ☐☐

101 Risk group (1-5)
(50) ☐

102 Does decision depart from guidelines?
(51) ☐

0 = no
1 = yes
8=not applicable, Control Judge

103 Reason for departure
(52-53) ☐☐

00=Judge followed Guidelines Decision
01 = High probability of dismissal
02 = High probability of conviction
03 = Low probability of conviction
04 = Physical or mental health of defendant
05 = Defendant's relationship to complaining witness
06 = Defendant's history of court appearance
07 = Defendant's demeanor in courtroom
08 = Sponsor is present at hearing
09 = Cause the guardian to be informed of defendant's arrest
10 = Defendant poses specific threat to victim or witness
11=Presence of warrants, detainers,etc.
96=Not applicable, Control Judge
97=Judge failed to list a reason
98=Other (specify:_____)

104 Did interviewer make an error?
(54) ☐

0=No
1=Yes, charge severity level is incorrect
2=Yes, risk level is incorrect
9=Missing value

Appendix B

DISTRIBUTION OF BAIL DECISIONS UNDER EXPERIMENTAL AND CONTROL APPROACHES

Table B.1 Distribution of bail decisions, by judge group

Control Decisions			Experimental Decisions[a]		
Bail amount (N)	Relative Percent	Cumulative Percent	Bail amount (N)	Relative Percent	Cumulative Percent
$ 0(421)	44	44	$ 0(372)	45	45
230(1)	0	44	80(1)	0	45
300(32)	3	47	300(10)	1	46
500(74)	8	55	500(82)	10	56
600(2)	0	55	600(4)	0	56
700(1)	0	55	700(1)	0	56
750(1)	0	56	750(2)	0	56
800(1)	0	56	800(18)	2	58
1,000(96)	10	66	1,000(96)	11	70
1,500(45)	5	70	1,100(1)	0	70
2,000(40)	4	74	1,500(57)	7	77
2,500(56)	6	80	1,600(1)	0	77
3,000(9)	1	81	2,000(31)	4	81
3,500(14)	1	83	2,500(25)	3	84
3,800(1)	0	83	3,000(20)	2	86
4,000(4)	0	83	3,300(1)	0	86
4,500(2)	0	83	3,500(9)	1	88
5,000(45)	5	88	4,000(4)	0	88
6,000(2)	0	88	4,500(1)	0	88
7,500(9)	1	89	5,000(50)	6	94
10,000(47)	5	94			
11,000(3)	0	94	7,500(12)	1	96
15,000(4)	0	95	10,000(19)	2	98
20,000(6)	1	95	15,000(3)	0	98
25,000(33)	3	99	17,500(1)	0	98
30,000(2)	0	99	20,000(2)	0	99
50,000(6)	1	100	25,000(7)	1	99
75,000(1)	0	100	30,000(1)	0	100
100,000(2)	0	100	50,000(3)	0	100
			100,000(1)	0	100
Mean = $3,110	Median = $493		Mean = $1,877	Median = $496	

[a]Cases decided by Judge 8 were excluded from the analysis.

Appendix C

THE IMPACT OF GUIDELINES ON BAIL CRITERIA

In earlier chapters, it was reported that the guidelines format appears to have been successfully adopted by the experimental judges; the fact that the decisions of the guidelines judges fell within the guidelines in roughly three-quarters of all cases suggests that a minimum test of their utility has been met. Specifically, it was hypothesized that to be useful decisions would follow the guidelines in a majority of cases. Further, it was found that despite overall or surface similarities in bail decisions, guidelines decisions differed noticeably when examined in more depth (for example, according to categories of charge and risk) from nonguidelines decisions. A final indication that judicial decision practices had been altered under the guidelines was discovered when the extent to which guidelines and nonguidelines decisions departed from those posited by the guidelines was assessed: overall and zone by zone, nonguidelines decisions deviated substantially more frequently from the guidelines construct than did the decisions of guidelines judges. Thus, taken together the findings from the earlier chapters provide evidence that the 14 month trial with the guidelines approach brought about distinct change in the practices of the experimental judges in the direction represented by the guidelines framework.

Another means of assessing the extent to which bail practices were modified in the desired direction by guidelines for the experimental judges is to focus on the factors or criteria relied upon by the judges in making their decisions. It may be argued that part of the objective of guidelines was to sponsor the use of decision criteria that have been agreed upon during the development of the guidelines as most appropriate to the bail task. Stated more directly, one hypothesis of the guidelines experiment was that use of guidelines would result in a more influential role for charge severity and risk (all the factors that go into the risk classification) among guidelines decisions than among decisions produced in the traditional fashion by the control judges. The following discussion examines this hypothesis from two related perspectives: a) the extent to which regression weights in a formula describing the relationship between charge severity and risk and the theoretical (predicted) decision posited in the guidelines matrix accurately predict the actual decisions under the experimental and control approaches; b) the extent to which knowledge of the severity and risk characteristics of actual defendants explains variance in bail decisions produced by the experimental and control judges.

Application of the Theoretical Regression Formula to the Actual Decision of Experimental and Control Judges

The first method for assessing the extent to which the severity and risk dimensions of the guidelines served as central

criteria in actual decisions is straightforward. A first step was to develop a regression formula based on the guidelines grid itself. In this step, each of the guidelines cells are viewed as cases, defined by a severity and risk value simultaneously. Based on knowledge of the risk and severity values for each of the 75 cases, an attempt is made to predict the bail amounts specified within each of the cells. (The midpoint of the suggested range is adopted as the value of the dependent variable. ROR is treated as $0 bail and values of the dependent variable are transformed into their logarithms.)

When this regression analysis is carried out--predicting the theoretical bail decision in the guidelines on the bases of knowledge of charge severity and risk--the following regression formula results:

$$B_p = 1.89 + .41 \text{ Risk} + .28 \text{ Severity}$$

Where B_p = predicted bail midpoint specified in the guidelines

Risk = classification of defendants into one of the 5 risk groups

Severity = classification of defendants into one of 15 charge severity categories.

In a next step, this regression formula is applied to guidelines and nonguidelines defendants substituting the actual severity and risk values. The aim is to learn how well actual bail decisions are predicted when the formula taken from the guidelines framework is applied. Predictions of bail decisions are produced and those is turn are correlated with the actual bail decisions assigned by the experimental and control judges. The following correlations between predictions of bail (based on the matrix regression weights) and actual bail are produced:

Nonguidelines defendants	Guidelines defendants
r = .59 (n = 960)	r = .64 (n = 840)[1]

To receive support, the hypothesis that the severity and risk dimensions of the guidelines had played a newly influential role in the decisions of the guidelines judges would require a showing of a correlation coefficient notably larger among guidelines decisions than nonguidelines decisions. Although a larger coefficient is found among guidelines decisions, it differs only slightly from that recorded among nonguidelines decisions. One

must conclude from this finding that the influence of the charge severity and defendant risk dimensions defined by the bail guidelines was only slightly greater in the decisions of the guidelines judges than in normal practices (i.e., as represented by the nonguidelines decision).

Explaining Variance in Bail Decisions Using the Guidelines Criteria

A related method for examining the impact of the guidelines format (defined by severity and risk) on decisions made by the experimental judges frames the evaluation in terms of explaining variance. Most simply stated, the hypothesis is that knowledge of the severity and risk characteristics should explain a greater amount of variance in the bail decisions assigned guidelines defendants than in the nonguidelines decisions. Under this approach, as a first step, a determination of the variance explained by severity and risk in the decisions posited by the guidelines themselves is necessary to establish the maximum amount of variance "explainable" by severity and risk within the guidelines framework. Next, regression analysis will be performed on the guidelines and nonguidelines decisions to determine the amounts of variance in actual decisions explained by the two guidelines dimensions. For the hypothesis to be supported, a higher proportion of the maximum "explainable" variance should be explained by severity and risk among guidelines decisions than among nonguidelines decisions.

Table C.1 summarizes the results of these analyses. First, it is learned that approximately 74 percent of the variance in the bail decisions suggested in the guidelines grid is accounted for by the severity and risk dimensions. Interestingly, when the square semipartial correlations are examined,[2] it is found that severity (at .61) and risk (at .14) do not exert equal influence in explaining variance in the guidelines matrix. This finding runs contrary to the assumption in the development of guidelines that the severity and risk dimensions would balance each other in a nearly co-equal fashion, the influence (variance explaining power) of the severity dimension that is built into the grid appears to exceed that associated with the risk dimension by more than 4 to 1.

When the results of the regression analyses of actual bail decisions are considered, it is seen that the charge severity and defendant risk dimensions do explain a greater amount of variance among guidelines decisions (the R^2 among guidelines defendants is .41 compared to an R^2 among nonguidelines defendants of .34). The difference is noteworthy but not major: severity and risk explain 55 percent of the maximum "explainable" variance among guidelines decisions compared to 46 percent of the theoretical maximum among nonguidelines decisions. It is also clear that the influence of the individual dimensions (charge and risk) is only slightly more pronounced among guidelines decisions.

Table C.1 The relative power of the charge severity and risk dimensions: comparing the variance explained in actual decisions (experimental, control) with the theoretical maximum explainable in the guidelines matrix

Decision model	Independent variables	R^2	Squared semipartial
1. Guidelines matrix (theoretical maximum)[a]	Charge severity		.61
	Risk		.14
	Maximum explainable variance	.74	
	Number of cases	(75)	
2. Nonguidelines decisions	Charge severity		.24
	Risk		.06
	Total variance explained	.34	
	Percent of maximum explainable variance	45.9	
	Number of cases	(960)	
3. Guidelines decisions[b]	Charge severity		.29
	Risk		.06
	Total variance explained	.41	
	Percent of maximum explainable variance	55.4	
	Number of cases	(840)	

[a]The dependent variable for the "maximum explainable" model was constructed by taking the logarithms of midpoints of the decision ranges within each of the 75 matrix cells (ROR was set equal to $0). In the case of actual experimental and control decisions, the dependent variables were constructed (using ROR and SOB set equal to $0) based on the logarithms of the actual bail decisions.

[b]Cases decided by Judge 8 were excluded from the analysis.

It is further interesting to note that the overall contribution to variance explanation by the risk dimension is low among guidelines and nonguidelines decisions alike (showing squared semipartial correlations of .06 in both instances--less than half the maximum power built into the guidelines for risk (at .14). The role of charge severity, explaining 48 percent of the maximum among guidelines decisions and explaining only 39 percent of the maximum among nonguidelines decisions, did not approximate the role for it built into the guidelines decisions model.

In short, it appears that the severity and risk dimensions as incorporated into the guidelines format have failed to reshape the factors governing the bail decisions of the guidelines judges in a dramatic fashion--although an effect is clearly discerned. It should be noted, however, that, in the case of the risk dimension, the design of the guidelines matrix itself may have limited the ability of risk to play more than a secondary role compared to charge severity.

NOTES

[1]The cases decided by Judge 8 have been excluded in this analysis.

[2]Square semipartial correlations measure the amount of variance added to the explanation of variance in a dependent variable by a variable when it is entered last--thus, after the effects of other variables are held constant.

Appendix D

CALCULATION OF AN EFFECTIVENESS RATIO FOR BAIL DECISIONMAKING

In Chapter Six it was noted that simple calculation of rates of failure-to-appear (FTA) and rearrest for released defendants was an incomplete measure of the effectiveness of bail decisionmaking. Ideally, we would like to know about "mistakes" in the use of pretrial detention as well as errors in granting pretrial release in order to evaluate the effectiveness of bail. If we agree that, at their most effective, bail practices should foster the release of the maximum number of defendants before trial unlikely to abscond or to commit new crimes and cause the detention of the minimum number of defendants likely to abuse release were it granted, then the following measure might serve as a better indication of the effectiveness of bail practices:

$$\text{Effectiveness ratio} = \frac{\text{Proportion of release defendants failing during pretrial release}}{\text{Proportion of all defendants released before trial}}$$

In effect, the numerator is the rate of FTA and/or rearrest normed to the overall rate of pretrial release produced. Thus, the use of pretrial release (or detention) is used to "correct" the failure rates generally reported. An example may help illustrate this point.

Example: Jurisdiction A has reported 20 percent FTA rate among released defendants during 1982. It has fostered pretrial release among 80 percent of its defendants. Jurisdiction B reports a 10 percent FTA rate, half the rate reported by Jurisdiction A, but has released only 40 percent of its defendants during 1982.

The effectiveness rates, which norm defendant failure rates during pretrial release to rates of pretrial release, are calculated as follows.

Jurisdiction A

$$\text{Effectiveness ratio} = \frac{.20}{.80} = .25$$

Jurisdiction B

$$\text{Effectiveness ratio} = \frac{.10}{.40} = .25$$

Although the failure-to-release balances are different in the two jurisdictions, their overall effectiveness may be judged as equal. Although 20 percent of released defendants absconded in Jurisdiction A--twice the rate of Jurisdiction B--half the proportion were detained. When detention and release are considered together, the overall effectiveness of the two jurisdictions would be rated the same.

Obviously, the lower the effectiveness ratio, the greater the overall effectiveness. A jurisdiction reporting a rearrest rate of 10 percent of released defendants and an overall rate of pretrial release of 85 percent (effectiveness ratio = .12) is obviously doing a better job overall than a jurisdiction with a 10 percent rearrest rate and a 50 percent release rate (effectiveness ratio = .20).

This approach has been applied to the bail decisions of the experimental and control judges in the current study by way of illustration. The effectiveness ratios of defendants under both bail approaches for categories of charge and zones of the guidelines are reported in Table D.1.

Table D.1 Calculation of an effectiveness ratio:[a] experimental versus control defendants, by felony misdemeanor grading and by guidelines zone

Judge Group	Total Effectiveness Ratio	Misd. 3s Effectiveness Ratio	Misd. 2s Effectiveness Ratio	Misd. 1s Effectiveness Ratio	Felony 3s Effectiveness Ratio	Felony 2s Effectiveness Ratio	Felony 1s Effectiveness Ratio
Experimental[b]							
FTA	.15	.15	.13	.10	.24	.14	.15
Rearrest	.12	.08	.09	.08	.17	.13	.18
Either FTA or rearrest	.23	.19	.20	.15	.36	.23	.27
Control							
FTA	.14	.09	.13	.13	.17	.20	.16
Rearrest	.13	.14	.12	.11	.12	.15	.12
Either FTA or rearrest	.23	.21	.22	.19	.25	.29	.25

	Total Effectiveness Ratio	ROR Zone Effectiveness Ratio	ROR/low Cash Zone Effectiveness Ratio	Cash Zone Effectiveness Ratio
Experimental[b]				
FTA	.15	.10	.21	.18
Rearrest	.12	.06	.11	.18
Either FTA or rearrest	.23	.14	.29	.30
Control				
FTA	.14	.08	.13	.24
Rearrest	.13	.08	.14	.19
Either FTA or rearrest	.23	.15	.23	.35

[a]The effectiveness ratio is calculated by norming the percentage of defendants failing during pretrial release to the percentage of defendants released before trial.

[b]The cases decided by Judge 8 have been excluded from the analysis.

Appendix E

SUPPLEMENTAL TABLES RELATING TO THE PERFORMANCE OF DEFENDANTS DURING PRETRIAL RELEASE

Table E.1 Selected failure rates (percent FTA, percent rearrested, percent rearrested for serious offenses, percent FTA and/or rearrest), by time until release (immediate versus later release), by defendant group

Defendant Group	Total Released	FTA		Rearrest		Rearrest for Serious Offense		FTA and/or Rearrest[b]	
	Number	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Experimental (Guidelines)[a]									
Total released	(716)	(92)	12.8	(70)	9.8	(25)	3.5	(161)	19.5
Immediately released	(606)	(73)	12.0	(52)	8.6	(16)	2.6	(109)	17.8
Later released	(110)	(19)	17.3	(18)	16.4	(9)	8.2	(32)	28.9
Control (Nonguidelines)									
Total released	(796)	(95)	11.9	(86)	10.8	(26)	3.3	(157)	19.4
Immediately released	(685)	(75)	10.9	(77)	11.2	(21)	3.0	(133)	19.1
Later released	(111)	(20)	18.0	(9)	8.3	(5)	4.5	(24)	21.2

[a]The cases decided by Judge 8 were excluded from the analysis.

[b]The total at risk for the FTA and/or rearrest failure measure is 722 defendants for experimental judges and 808 defendants for the control judges.

Table E.2 Offenses for which defendants were rearrested during pretrial release, by judge group

Offenses for which rearrested[a]	Experimental Defendants[b]		Control Defendants	
	Number	Percent	Number	Percent
Total rearrested[c]	70	100.00	86	100.0
Miscellaneous	3	4.7	5	6.2
Public order	17	25.0	20	23.5
Weapons	0	0	4	4.9
Public administration	2	3.1	0	1.2
Other personal	4	4.7	5	6.2
Other property	15	20.3	16	17.3
Drugs	4	6.3	10	12.3
Aggravated assault	4	6.3	8	9.9
Burglary	13	17.2	7	7.4
Robbery	5	7.8	11	11.1
Serious personal	3	4.7	0	0.0

[a] See attached list for definitions of offense categories used here.

[b] Cases decided by Judge 8 were excluded from the analysis.

[c] Approximately ten percent of defendants released under the experimental approach were arrested for alleged offenses occurring during the pretrial release period; 11 percent of those released under the control approach were rearrested.

Definition of categorization of offenses in Table E.2

The kinds of offenses included in the categories employed in Table E.1 are specified in the following list:

Miscellaneous
- Motor Vehicle Code violations
- Cigarette Tax Act violations
- Liability for conduct of another
- Liquor Code violations
- Gambling, lotteries, poolselling, and bookmaking

Public order
- Incest
- Cruelty to animals
- Interference with custody of child
- Loitering
- Sale or illegal use of solvents
- Riot
- Criminal mischief
- Possession of synthetic drugs
- Defiant trespasser
- Corruption of minors
- Failure to disperse
- Possession of dangerous drugs
- Indecent exposure
- Disorderly conduct
- Voluntary deviate sexual intercourse
- Resisting arrest
- Possession of narcotics
- Possession of marijuana
- Prostitution
- Driving under influence of alcohol or drugs

Weapons

Public administration
- Perjury
- Unsworn falsification
- Tampering with public records
- Contraband
- Impersonating a public servant
- Witness or informant taking bribe
- False alarm
- Escape
- Bribery
- False reports
- Hindering apprehension
- Tamper with witness or informant
- Obstructing administration of law

Other personal
- Propulsion of missiles onto roadway
- Involuntary manslaughter
- Endangering welfare of children
- Reckless endangerment
- Indecent assault
- Terroristic threats
- Simple assault

Property, theft
- Tampering with records
- Removal, falsification of motor vehicle number
- Bad checks
- Causing, risking catastrophe
- Credit cards
- Criminal trespass
- Forgery
- Theft by extortion
- Theft, leased property
- Theft, disposition of funds
- Theft, property lost or mislaid
- Unauthorized use of auto
- Theft of services
- Theft by deception
- Receiving stolen property
- Retail theft
- Theft, unlawful taking or disposition

Manufacture/delivery, sale of drugs
- Manufacture/delivery of nonnarcotics, subsequent offense
- Sale of narcotics, subsequent offense
- Sale of nonnarcotics, subsequent offense
- Sale, manufacture/delivery of nonnarcotic drugs to minor
- Manufacture/delivery of narcotics, subsequent offense
- Manufacture/delivery of synthetic drugs
- Sale of synthetic drugs
- Sale of dangerous drugs
- Manufacture/delivery of dangerous drugs
- Sale of narcotics
- Manufacture/delivery of narcotics
- Sale of marijuana
- Manufacture/delivery of marijuana

Aggravated assault

Burglary

Robbery

Serious personal
- Voluntary manslaughter
- Assault by prisoner
- Statutory rape
- Involuntary deviate sexual intercourse
- Kidnapping
- Arson
- Rape
- Murder

Appendix F

SUPPLEMENTAL TABLES RELATING TO THE CHARACTERISTICS OF PRETRIAL DETENTION UNDER THE TWO BAIL APPROACHES

In Table F.1 the detention of defendants under the two bail approaches is summarized by comparing the groups along the dimensions of selected demographic and legal attributes. Although differences between the experimental and control approaches are noted at the bivariate level, these differences did not survive when controls were exercised in multivariate analysis. Both multiple regression and discriminant function analyses were conducted to attempt to distinguish among the groups of detainees defined under each bail approach. Quite remarkably, neither analysis produced significant results. Thus, we conclude that experimental and control detainees are not qualitatively different when controls are exercised.

Table F.1 Selected attributes of defendants detained (longer than 1 day), by judge group

Attribute	Experimental defendants detained[a] Number	Percent	Control defendants detained[b] Number	Percent
Age				
20 years and younger	(54)	37	(59)	42
21-25 years	(73)	31	(77)	28
26-30 years	(43)	26	(62)	30
31-39 years	(41)	24	(40)	23
40 and older	(15)	13	(25)	15
Race/ethnicity				
Black	(190)	34	(208)	33
White	(28)	11	(36)	13
Hispanic	(5)	19	(16)	35
Other	(4)	44	(3)	30
Sex				
Female	(17)	16	(14)	12
Male	(210)	29	(249)	30
On Welfare				
No	(145)	24	(165)	25
Yes	(66)	34	(88)	36
Employment Status				
Employed	(43)	15	(54)	15
Not employed	(176)	33	(203)	36
Charge				
Misdemeanor 3	(3)	2	(10)	6
Misdemeanor 2	(18)	13	(28)	18
Misdemeanor 1	(17)	12	(24)	15
Felony 3	(50)	36	(39)	24
Felony 2	(55)	39	(60)	38
Felony 1	(84)	60	(102)	64
Arrests (last 3 years)				
0	(66)	15	(75)	16
1	(52)	30	(54)	29
2	(35)	35	(46)	38
3 or more	(74)	74	(88)	52
Prior arrests -- serious property crimes				
0	(105)	19	(122)	19
1	(58)	36	(69)	40
2	(23)	38	(43)	54
3 or more	(41)	53	(29)	47

Table F.1 Selected attributes of defendants detained (longer than 1 day), by judge group (cont'd)

Attribute	Experimental defendants detained[a] Number	Percent	Control defendants detained[b] Number	Percent
Prior arrests -- serious property crimes				
0	(129)	21	(147)	20
1	(47)	44	(67)	51
2	(20)	53	(19)	49
3 or more	(31)	46	(30)	48
Prior arrests -- drug crimes				
0	(169)	26	(177)	24
1	(23)	24	(41)	34
2	(13)	33	(15)	41
3 or more	(22)	36	(20)	56
Prior arrests -- weapons crimes				
0	(148)	24	(158)	22
1	(40)	33	(57)	38
2	(19)	37	(26)	54
3 or more	(20)	44	(22)	52
Prior convictions				
0	(105)	20	(137)	22
1	(50)	44	(43)	34
2	(19)	35	(25)	43
3 or more	(53)	38	(58)	40
Prior felony convictions				
0	(140)	22	(171)	23
1	(38)	41	(39)	39
2	(19)	37	(21)	45
3 or more	(30)	48	(32)	54
Prior convictions -- serious crimes against person				
0	(170)	24	(209)	25
1	(35)	38	(37)	45
2	(15)	56	(13)	45
3 or more	(7)	54	(4)	50

Table F.1 Selected attributes of defendants detained (longer than 1 day), by judge group (cont'd)

Experimental

Control

Attribute	defendants detained[a] Number	Percent	defendants detained[b] Number	Percent
Prior convictions -- weapons offenses				
0	(192)	26	(218)	26
1	(23)	36	(32)	39
2	(8)	40	(8)	50
3 or more	(4)	44	(5)	83
Prior willful FTAs				
0	(143)	22	(152)	20
1	(34)	47	(46)	51
2	(16)	38	(20)	41
3 or more	(33)	49	(44)	70
Pending charges				
0	(147)	22	(161)	22
1	(56)	51	(63)	43
2	(10)	42	(22)	61
3 or more	(13)	65	(16)	64
Risk				
group 1	(11)	10	(18)	13
group 2	(12)	7	(11)	7
group 3	(44)	24	(43)	19
group 4	(70)	35	(75)	35
group 5	(90)	52	(116)	52

[a]The total number of experimental defendants was 840.

[b]The total number of control defendants was 960.

Appendix G

SAMPLING ERROR ASSOCIATED WITH ESTIMATES OF THE POPULATION OF THE PHILADELPHIA PRISONS

The discussion of the population of the Philadelphia prisons (collectively serving as Philadelphia's urban jail) is based on a random sample (n = 492) of that population (n = 3,694) as it stood on a single day (December 9, 1981) toward the end of the period of the guidelines experiment. Because the figures reported are therefore estimates, there is error associated with them. The following table should serve as a useful guide to the margin of sampling error likely to be associated with estimates of different magnitudes at the 95 and 99 percent confidence intervals:

Study of Philadelphia Jail Population: Guide to Sampling Error

Magnitude of Estimate	Likely Margin of Error at 95 Percent Confidence	Likely Margin of Error at 99 Percent Confidence
Estimate is:	True value is between:	
5%	3-7%	2-8%
10%	7-13%	7-13%
25%	21-29%	20-30%
50%	46-54%	45-55%
75%	71-79%	70-80%
90%	87-93%	87-93%
95%	93-97%	92-98%

☆U.S. GOVERNMENT PRINTING OFFICE: 1984-450-624/19151

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