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An Analysis of Bail Setting and Jail Capacity

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AN ANALYSIS OF BAIL SETTING AND JAIL CAPACITY

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INTRODUCTION

According to the President's Commission on Law Enforcement and the Administration of Justice, more than one-half of the defendants brought into a magistrate's court are released or convicted and sentenced within twenty-four hours of their arrest. The rest await final disposition for days, weeks, sometimes months. Bail is recognized by law for the sole purpose of assuring the defendant's appearance at trial, yet it is commonly used as a means of keeping what the judge determines as potentially dangerous defendants in jail. In a great number of cases this procedure is ineffective. Professional criminals, criminals connected with organized crime generally have little trouble posting bail although they are clearly dangerous.

The Commission concluded that what is needed is a solution for those who represent a small-risk potential for skipping bail. Their recommendations in 1966 included the use of nonfinancial bail for all but those who present a high-risk of flight or dangerous acts prior to trial, if the judicial officer could be furnished with sufficient information to permit pretrial release. The Commission adequately identified the problem of bail setting within

the Criminal Justice system, yet their recommendations are at best weak.

The bail system as it now exists is unsatisfactory to both the public's and the defendant's points of view. Its very nature of transforming risk of flight and dangerousness into dollars and cents is of doubtful validity. The requirements of posting money bail in most cases causes discrimination against defendants who are poor and often imposes hardships on those families involved as well as on the public who must pay the cost of detention and frequently support their dependents.

Of even greater concern is the routinely haphazard way bail is typically set. What should be an individualized and informed decision, taking into account factors relevant only to the immediate bond setting, has turned into largely a mechanical decision. The last fifteen years have witnessed an increased number of empirical studies of the system of bail. Many of these studies have attempted to determine the factors which are most relevant in the decision making of bond setting (Ebbesen & Koneci, 1975). Other studies have been the catalyst needed for the bail reform movement of the late 1960s (Silverstein, 1966; Suffet, 1969). All of these studies focused on the defendant at bond setting, his characteristics, the judge's perception of the defendant, or human interaction during the process of setting bail.

Many features of the bail system remain unexplored. Research has been done on the standards which guide the judge in setting bail and on the legal consequences of pretrial detention, but the social consequences suffered by those who are detained and the structural factors of the organization influencing the judge's determination of bail have not yet been investigated. One such structural variable which appears to have relevance to this determination of bail is the size of the pretrial detention center. There is a lack of resources available on the relevance of the size of the jail on the setting of bail. It is a factor often commented on, obviously relevant for overcrowding would largely cause concern, yet it is an unexplored area of research.

This thesis will be concerned with whether or not the population of the pretrial detention facilities is a factor in the judge's determination of the kind and amount of bail to be set.

The framework for analysis will include: (Chapter I) an examination of the historical background of the principles and practice of bail; (Chapter II) a review of the literature on bail, including a summary of the institutional developments of bail in the American Judicial system; (Chapter III) an examination of pretrial detention facilities in Omaha and a brief review of the literature; (Chapter IV) the study of bail and jail population in Omaha, the methods, procedure, findings and results.

CHAPTER I

THE HISTORY OF BAIL

Bail is not a new phenomenon or a creation of the American Criminal Justice System. The earliest reference to bail is found in Plato's classic The Laws, where reference was made to bail for an alleged murder. Bail was also found in the Chinese culture as early as the eighth century and origins of pretrial release were found in England by the twelfth century.[1]

Bail as it first existed was a heavy responsibility. Friends or relatives of the accused would accept custody of the one awaiting trial. In return for the custody of the accused, the sureties pledged themselves as virtual hostages. If the surety failed to produce the alleged offender for trial, he himself would stand trial and serve the proscribed punishment.

Originally there were two alternatives of pretrial release, the first called mainprize, the second bail. Mainprize applied to persons who were denied bail. The accused, under mainprize, was legally free and his surety was responsible only for producing him at trial. In bail, the accused was technically in prison, he was not legally

free. These differences became obscured, our present concept of bail appears to be a synthesis of both mainprize and bail. The theory of body for body is no longer used, yet the original concept of bail is retained, for in bail, not mainprize, the surety was permitted to seize and return the offender should he indicate he might flee.

Associated with mainprize were the concepts of financially punitive measures. If the surety failed to produce the accused for trial he could be ordered to pay the fines to the king, or quite often, turn over all of his goods to the king in payment for his failure as a surety. This appears to be the originating practice for the modern posting of bond as bail. As the process of payment developed in early times, an attempt was made to establish a fixed minimum for fines, suggestive of a successful attempt to proscribe excessive bail.

The practice of bail was widespread in Medieval England, but it was not practiced because of a love of abstract liberty or because of the deplorable jail conditions. It was practiced because detention was troublesome for the sheriff as well as costly for the Crown. The discretion to admit the accused to bail was first given to the sheriff.

It was not until the reign of Henry II that prisons appeared in each county. They were originally not used for purposes of punishment or correction, but were used for

detention. These prisons called gaols soon became the county jails. The gaols were not used for imprisonment for punishment because typically punishment was inflicted in a rapid, vengeful, but not at all a costly fashion. Characteristically, the response for a felony conviction was most commonly death, then outlawry, a particular mutilation, or sale into slavery.

With death the most common punishment, the temptation to escape was great as well as the opportunities for escape from the county jail which were lacking in security of any kind. As sureties came not to be held responsible in body for the alleged offender, escapes became frequent. These escapes were almost welcome, because they helped diffuse responsibility of passing and carrying out a death sentence.

For the accused that escaped the county jails, the churches offered refuge for forty days. The county coroner was delegated the duty to find the escapees and to try to persuade them to return for trial. Their only other alternatives were abjuration, to leave the kingdom, forfeit all lands and all legal protection.[2]

It wasn't until 1215 when the Magna Carta was signed that there was a foundation laid for the right to bail. The great law of bail, in existence for four and a half centuries attempted to limit the abuses of the sheriffs in the administration of bail. This law of bail was called

the Statute of Westminster enacted in 1275, fifty years later. It was quite specific as to what offenses were bailable and which were not. Misdemeanors, such as petty larceny and those offenders taken on light suspicion were bailable. Those nonbailable included escapees, known thieves, arsonists, counterfeiters and treasonists.

The Statute of Westminster which limited bail was an interesting law to be passed during a period when the monarchy of England was extending its authority. As the judicial system evolved, the sheriffs were limited in their powers of discretion in bail and other matters as well. The nonbailable offenses were not nonbailable at all, although the right to bail was not absolute, at times bail was granted by a judicial authority superior to the sheriff. The authority to grant bail gradually transferred to the justices of the peace. By 1360 they were responsible for the administration of bail.

The administration of bail in the 1400s was a clumsy procedure. For bail to be granted, two justices had to agree on both whether bail should be granted and if it was, on the dollar amount. This was a tedious task, yet was probably the establishment of the bail hearing as it exists today. In order to grant bail the two justices were to bail the accused by information they were given.

The English Bill of Rights in the 1600s presented a provision that excessive bail ought not be required. The

practice of setting bail unreasonably high in order to keep the accused in detention was common. The offender unable to post bail suffered in prison. Often times, as is still true today, innocent defendants awaited trial in jail.

The colonists leaving England imported the whole bail system into practice to America. One of the early pieces of legislation, The Massachusetts Body of Liberties in 1641 declared the right to bail and that excessive bail ought not to be required in all states. Thomas Jefferson sought to limit judicial discretion in the granting of bail. He also recommended that bail be available for all but capital offenses.

The explicit right to bail is not a constitutional guarantee in the United States. The Eighth Amendment guarantees only that bail ought not be excessive. This amendment has been interpreted in such a way that bail is an absolute right implicit in the Eighth Amendment against excessive bail. It has also been suggested by Justice Black that the first and fifth amendments are also violated in denying bail, especially the fifth, where denying bail would be depriving a person of liberty without due process of law.[3]

The right to bail in the United States was granted by the Judiciary Act in 1789. It granted an absolute right to bail to those accused in the federal courts, except in

the case of a capital offense where discretion is to be used.

Injustices of the bail system were found early in the American Criminal Justice System. The rich were able to gain pretrial release while the poor remained incarcerated. The poor, consistently immigrants were those which remained under detention. They came from characteristically overcrowded areas where the crime rate was high. One man who observed these injustices in the system was John Augustus who by standing himself as bond for many of the accused immigrants in Boston helped revert bonding back to its origins and create a program that later developed into probation.[4]

Professional bonding was an American creation. The role of the professional bondsman increased as communities grew and became more impersonal. The bondsman judged the risk of flight on the part of the accused and determined his fate, pretrial release or detention. Courts became dependent on bondsmen to apprehend those who fled, especially before police forces across the states were well organized. Such leading court cases as Taylor Taintor 1872, granted the right of the bondsman to pursue the accused.

There have been many problems inherent in the bail system. Abuses of bail bondsmen, defendants whose only crime is their financial condition are kept in deplorable conditions in detention centers. As a result of this

pretrial incarceration, the defendant and his family are forced to suffer hardships which may continue for months.[5]

Advocates of bail reform in the 1960s pointed to the great savings inherent in the bail reform projects. They also saw a need to eliminate or reduce the influence of the bondsman in the administration of bail. Charges against the bail-bonding business ranging from corruption to domination by criminal elements such as organized crime aided the movement.[6]

In addition to these reasons for reforming the traditional bail system, the system can be criticized on philosophical and constitutional grounds. "The most basic criticism is that the traditional system punishes a defendant merely because he is financially incapable of raising the required bond. What is even more irritating is that it is an irrational procedure for insuring the defendant will appear for trial, converting risk of flight into dollars and cents."[7]

The bail reform movement was of relatively short duration, beginning with the Vera project in Manhattan in 1961 and the Federal Bail Reform Act in 1966. During the ten year period from 1961 to 1971, there have been over one hundred bail reform projects in operation across the country. These projects centered around the defendant at bail setting. These bail projects as well as other studies of posting bail in the courtroom will be reviewed in the following chapter.

CHAPTER II

THEORETICAL PERSPECTIVES

Twentieth century America began with sharp criticism of the evils and corruption of the bail system, part of a general movement to reform the Criminal Justice System. The right to bail in the United States was nominally absolute but in practice the amount of bail established was generally unobtainable. In most states the inability to obtain bail, or rather the financial ability of the defendant was overlooked or given no weight in the judicial decision. The decision process for bail became largely a mechanical one, where the charge rather than other facts concerning the defendant dictated the amount of bail to be set.

In the 1900s, the first empirical study of bail was conducted by Professor Arthur Beeley at the University of Chicago. Beeley examined the bail system of Chicago and concluded that the poor defendant was given little opportunity to secure pretrial release. Beeley emphasized the lag between practice and theory, his study demonstrated that in cases where bond was not posted to obtain pretrial

freedom, it was generally due to the poverty of the accused.[1]

Beeley also found that, contrary to accepted opinion, unsentenced jail prisoners were not habitual criminals. Less than half of the prisoners studied had local records of conviction. He found that typically, the accused were young, native born, white, single, and a resident of the area. The second most common characteristic found in his study, second only to poverty, was a lack of vocational skill. Beeley observed that the professional bondsmen frequently determined the fate of the accused, whether it would be jail or bail.[2] The judges tended to set bail in arbitrary amounts without reference to individual characteristics such as history or integrity.

Professor Beeley was an early advocate of the policy of release on own recognizance (ROR), a technique allowing pretrial freedom for the defendant without a financial surety. Beeley also recommended that if the bail bond were to continue, the amount of bail should be reduced or better yet, eliminated and used only in peculiar cases within the discretion of judges. It should not be necessary if adequate information was collected to support the ROR release.

There is no evidence that Beeley created much controversy in the field with his criticisms and recommendations for the bail system. However his pioneering study created

an awareness which was a beginning of bail reform in the United States.

Beeley's most important recommendation to reform of the bail system was for close regulation of the professional bondsman. The use of the bail bondsman was further studied in 1926 by Professor Raymond Moley of Columbia University. Moley, in a study for the Missouri Association for Criminal Justice, presented considerable statistical data on the laxity in administrative efficiency of the Missouri courts. In addition he documented many cases of fraud by the bonding profession. Moley's study was characteristic of the era, receiving considerable interest. It, as others in the 1920s and 1930s dealt with the corruption which tied the bail bond business with the courts. Moley further tied the bondsmen with the underworld and claimed that many of the people who sold the bonds to defendants were men with criminal records themselves, with motives of strict profit.[3]

Professor Moley compared bail practices between England and the United States. A low forfeiture was found characteristic of the English system. Moley credited this to the English system's strict examination of sureties, the practice of denying bail entirely, and more haste in bringing cases to trial.[4]

In reviews of Raymond Moley's work, he has been most noted for calling attention to the need for regulating

the professional bondsmen. Moley called attention to the corrupt practices in the American bail system, but was not the pioneer of this idea.[5] Beeley in 1927 had begun the attack on the courts themselves since they have the ultimate responsibility for administering bail.

Beeley's concern for the plight of the poor man remained hidden for a number of years. No extensive study on bail was made until 1950 when again a study was done, similar to Beeley's, on the maladministration of bail in Philadelphia including a new framework in this area of research, the federal courts. Caleb Foote studied the administration of bail in both the state and federal courts, differentiating between the two in his study.

Foote's study produced supportive data to Beeley's hypothesis that large numbers of poor were unable to obtain bond. He found further the difficulties of predicting future behavior of those released before trial. The bail on the federal level is set by the U.S. Commissioner. In Foote's study, the offenders charged with the less serious crimes whom had bail set by a magistrate, were released before trial in 73 percent of the cases. The group which contained the serious-violent charges, where bail was set by the magistrate, were released before trial in only 24 percent of the cases. Of the 75 percent which did not obtain release, only 50 percent went to prison as a result of trial.[6]

Foote was further concerned with the pretrial detention facilities. They detained a large number of proven innocent, yet were so punitive in their restrictions on daily habit and visiting. He observed that detention centers where those awaiting trial are held, were frequently more oppressive than the regular prisons to which they were convicted. This is true even today. Foote continued the criticism of the bondsman as begun by Beeley and Moley.

A generally accepted criterion for establishing bail up until this time, in theory, was the financial ability of the defendant. In practice, as hypothesized and statistically proven by the previous studies, this was frequently ignored. Poverty is the most common characteristic of those arrested for minor offenses. Yet as Foote contended, poverty contributes not only to the numbers to offend and the incapacity to elude the law, but poverty also contributes to the denial of equal opportunities to make bail.[7]

Caleb Foote was not only an outstanding scholar on bail in the 1950s, but he provided the foundation for which the bail reform movement was to grow, emerging in the early 1960s. His studies in New York preceded the establishment of the Vera Foundation which gave birth to the theory and concepts of a more individualized bail system.

In other parts of the United States meanwhile, other authorities on bail were adding dimensions to the system. Arnold Trebach in New Jersey interviewed groups of prisoners and toured pretrial detention centers. Despite the relatively high standards of justice practiced in New Jersey, Trebach observed conditions of detention where the prisoner, the offender awaiting trial was subjected to insufficient food, exercise, and frequently to overcrowding and brutality. Trebach suggested that as a direct result of these conditions many innocent individuals were participating in bargain justice simply to escape the deplorable conditions. By pleading to a lesser or bargained offense, they initiated their prison sentence, removing themselves from the jails to the prisons, which by comparison were more appealing.

A more recent study on bail by Ronald Goldfarb in his book Ransom: A Critique of the American Bail System, presents numerous case histories describing malpractice in the American system of bail. Goldfarb suggests that the bail bonds should be eliminated and that the only basis for the decision of bail should be the review of the defendant's family ties, job and residence. Goldfarb's research led him to pay particular attention to two of his major findings. First, he contended that through the misuse or rather manipulation of the bail powers, preventive detention was practiced without any protection for the defendant. This finding is particularly relevant to this thesis and will be

discussed in more detail later. Secondly, his research made him aware of the fact that the bail system has been used to frustrate and coerce civil rights demonstrators. Manipulation of the bail system has been used to create injustices in the forms of either outright denial of bail or the setting of bail at an extraordinarily high amount. These were not new findings, the Civil Rights Commission reported similar findings earlier in the sixties. The point Goldfarb made, was that appropriate federal legislation should be initiated to guard against future abuse and provide a statutory model for the states.[8]

Goldfarb's attention given with respect to preventive detention could possibly have provided the theory underlying the recommendations for bail made by the President's Crime Commission in the late 1960s. Goldfarb criticized the bail system stating it did not protect society. The major criminal who might present a menace to society can easily afford bail and ends up on the streets before his trial, threatening witnesses, destroying evidence and endangering society. This very closely resembles the criticisms made by the President's Commission, that the professional criminal has little trouble posting bail although they are clearly dangerous.[9]

The 1960s witnesses a philanthropic movement to reform the bail system, led by Louis Schweitzer who became involved with the large number of adolescents who were

being held under deplorable circumstances of imprisonment while awaiting appearance before the courts. To remedy this problem, Schweitzer created the Vera Foundation in New York in 1961.

The Vera Foundation was built on the work and theories of Caleb Foote and others. The foundation persuaded judicial officials in New York to let foundation employees interview individuals accused of felonies and to then recommend, following the interview, release without bond. This project was called the Manhattan Bail Project. It focused on the Manhattan Criminal Courts and was originally operated by the New York University School of Law, the Institute of Judicial Administration and a Ford Foundation grant.[10]

At first the foundation recommended only about one-fourth of those interviewed for release. As the project continued, it recommended more and more and the courts, reluctant at first, began accepting an increased percentage of the recommendations. With the instituting of this procedure, failure to reappear while out on bond slightly decreased.[11]

The project initially included all offenses including rape, homicide, and other major offenses. These offenses were soon dropped from those which qualified for initial interviewing, not that they implied the accused were poor risks, but the foundation didn't want to endorse

the release of those whose behavior would hamper public relations.

The basic hypothesis of the Manhattan Bail Project was that the defendant could be released with more success if their decision for bail was made on the basis of information concerning their roots in the community. New York University Law students interviewed the defendants using procedures identical to those currently used by the Creighton University Law students involved in a similar program in Omaha at the time of this study.

The Creighton Law students first check the defendant's previous criminal record and present charge. If at this point the defendant is acceptable into the program, the defendant provides information about his employment, family, relatives in the county, and his health. A point system is used by the interviewer to evaluate the information which is verified by telephone. The Creighton student then makes a recommendation to the judge at the defendant's initial court appearance where bond is determined. If the defendant is released, the Pretrial Release Project then reminds the defendant of his date to appear in court for his preliminary hearing or his trial. The Project also provides for closer supervision of the defendant if the judge so makes it a condition of the bail.

Data analyzed from the Manhattan Bail Project found that one-half of the accused arraigned on burglary charges

were detained without bail. Felonious assault and sex crimes showed only 20 percent of the defendants accused held without bail. The statistics appeared to indicate that defendants who posed greater threats to the community were more likely to obtain release. Looking closer, financial inability to post bail is seen as the key again, to pretrial detention in a large number of cases. When bail was set under $100.00 it was posted in approximately 98 percent of the cases, but where the bond was $1500.00 or higher only 65 percent were able to make bond. As the bond increased, the percentage of defendants capable of posting it sharply decreased. The Manhattan Criminal courts imposed detention on 81 percent of the defendants interviewed by the Vera Foundation. Jail time ranged from one day to almost a year with the median detention time being 32 days. Approximately 15 percent of the total cases studied suffered pretrial detention, to later have their cases dismissed.[12]

Data collected by the Vera Foundation supports the hypothesis that a defendant released before trial has a better opportunity to receive a favorable outcome at further court proceedings. The defendant has the opportunity to help prepare his case, continue in his employment, and enter the courtroom without the stigma of delivery from jail.

Conclusions derived from the work of the Vera Foundation pointed to the desirability of more equitable practices in the administration of justice. This of course, was the heart of the Manhattan Bail experiment, it brought bail reform beyond simple advocacy into the realm of demonstrated achievement.[13]

The Manhattan Bail Project was not the first model practice in bail administration. District courts in Northern Michigan and New York commonly accorded to accused persons with an established residence in those areas release on recognizance. Incidence of flight in these two courts was far less where bond was infrequently required, a surprise to many because of the closeness of the Canadian border.[14]

Louis Schweitzer also led a novel attack on pretrial detention, the Manhattan Summons Project was created on the premise that in instances of petty crime, the accused may be relied upon to appear in court on the basis of a summons, a simple notification. This project was sponsored jointly by the Vera Foundation and the New York Police Department in 1964. The project would avoid in a large proportion of the cases, the necessity for formal arrest. The savings would be considerable in police time and public expenditure. The defendant was relieved from embarrassment and possible later stigma which is associated with the experience and record of arrest and

adjudication. The Summons Project was an outgrowth of the bail project with the same objective, to preserve the dignity and liberty of accused persons prior to trial.

The Manhattan Summons Project was run basically the same as the bail project. It began with selected groups of offenses, disorderly conduct, simple assault and petit larceny. Law students interviewed the accused to determine their reliability in returning for subsequent court proceedings. The project showed significant results, which are of major importance because approximately 90 percent of all offenses in America are minor crimes.

A similar significant bail project was undertaken in Washington D.C. The Washington D.C. Bail Project was initiated in 1963 following the Vera Foundation. The experimental bail project in D.C. included both felonies and misdemeanors. The findings of this project were similar to those in New York. In a sample of 2,052 felony charges, bail in the District of Columbia was established at a mode of $600.00 to $1,000.00. Fifty-four percent of those accused were able to post bail, with the median time spent in jail of 2 1/2 months. In cases where the defendant did not make bond, the typical period of detention was from 1 to 199 days.

Considering the presumption of innocence it is shocking to note the pretrial detention experiences of the defendants whose cases were eventually dismissed. Most

TABLE I

Time Spent in Jail by Defendants Between Arrest and Final Disposition of the Case

Days in Jail	% of Defendants
Less than 10 days	11%
10-99 days	53%
100-199 days	32%
200-400 days	4%
Total	100%

defendants were detained in excess of 10 days, many for 180 days or longer.

In review of the findings of the D.C. Bail Project, close resemblance is found to the findings of the Manhattan Bail Project. Of 350 defendants who were released on personal recognizance through the D.C. Project recommendation, 13 failed to reappear in court. Of the 13, 9 were misdemeanor charges and 4 felonies. Three of the four were later reduced to misdemeanors.[15]

The D.C. Project data does not support pretrial release as strongly as does that of the Manhattan Project, but the great advantage of release on personal recognizance were apparent.

Caleb Foote, associated with the Vera Foundation, interviewed 12 of the 13 judges in the District of Columbia

in 1959. He found their attitude toward bail reform varied considerably. A few of the judges supported Foote's search for the ideal of equal justice, others were not so committed even if it caused hardship on the poor.

Louis Schweitzer and the Vera Foundation had succeeded in creating a nation wide interest in bail. The Bail Reform Act of 1966 revised the practices relating to bail to assure that all persons, regardless of their financial status would not be needlessly detained pending their appearance at further proceedings. The Reform Act set standards for release on personal recognizance, a simple way to deal with pretrial custody of a defendant, releasing him outright. The Vera experiment showed that if properly supervised, ROR was feasible because people were basically trustworthy and would not flee.

Releasing a defendant only upon his promise to appear at further proceedings relieves the court of the administrative waste of time and money it spends in its custodial role. ROR may take any one of the following forms: outright release on trust, release on the unsupported bond of the defendant alone, or release on the promise of the defendant to return plus a fractional cash deposit.[16]

Release on own recognizance differs from bail. Essentially, a bail bond is a contract executed by the defendant and requiring sureties or bail by third persons,

the defendant is released in the custody of these other parties. ROR is a matter of record entered into by the defendant in front of a judge, it may be only a promise or may also include a symbolic deposit by the defendant.

The 1966 Bail Reform Act also added further protection against the abuses defendants encountered in using bail bondsmen as a means of obtaining release. The act provided for a ten percent plan where the defendant could deposit cash or other surety not to exceed 10 percent of the amount of the bond, which would be returned to the defendant when he met the conditions of his release.

In essence, the Bail Reform Act was created on the basis of the findings of the experimental bail projects of the early 1960s. The people responsible for these projects such as Caleb Foote and Louis Schweitzer took an active part in legislative hearings as this act was developing, as did Ronald Goldfarb.

The 1966 Reform Act was accepted into practice by all states and worked satisfactorily. A very minor percentage of defendants failed to appear at subsequent court proceedings.[17] Recently many states such as Nebraska, has updated the Bail Reform Act. In 1974, Nebraska passed a new bail bond bill which ordered any bailable defendant be released on his personal recognizance, unless the judge determines such a release will not reasonably assure the appearance of the defendant. If the judge determines the

necessity of further conditions he can release the defendant into the custody of another party, restrict the defendant's travel, or place some other kind of limitation on the defendant.

The 1974 Bail Bond Bill also provides criteria for the judge to use in reasonably assuring the defendant's future reappearance. The judge may take into account (1) the nature of and circumstances of the offense charged, (2) the defendant's family ties, (3) employment, (4) financial resources, (5) character and mental condition, (6) the length of his residency in the community, (7) his record of convictions, and (8) his record of appearance at Court proceedings or of flight to avoid prosecution or of failure to appear at Court proceedings.[18] In addition to ROR the judge in Omaha has the options of imposing bail in dollar amounts under the 10 percent plan, straight dollar bails, property bails, and/or impose any other conditions deemed reasonably necessary to assure appearance.

CHAPTER III

PRETRIAL DETENTION FACILITIES

Approximately 20 percent of all the defendants charged with felonies or serious misdemeanors are not able to obtain their pretrial release through posting bail or personal recognizance.[1] These people must await further court proceedings in a local detention facility. Many persons accused of a crime are incarcerated for periods of time because of their inability to post bail. These same defendants are often not indicted for the crime, or are later found not guilty after trial, yet, their incarceration results in the loss of liberty, separation from families and loss of employment, at the expense of the state for costs of confinement and probable financial help for their dependents.

After the defendant is arrested, he is taken into custody and initially detained at the police station. This is the general procedure for felonies and serious misdemeanors, those apprehended for less severe crimes are typically given citations to appear in court at a future date. The police station is only a temporary holding cell until the defendant has his initial court appearance. At

this point in the Criminal Justice system in Nebraska, the defendant is transferred from the control of the police department to the jurisdiction of the Nebraska Department of Corrections. The defendant is then placed in the second detention facility, the county jail until such a time when he can secure his release. The county jail is housed in the same building as the initial court appearances are handled. In many cities the majority of jails are over five miles from the courthouse resulting in inconveniences between the defendant and his lawyer. The lawyer may not only be restricted by the distance, but also by the visiting hours.

The main similarity found in a study of eleven city jails across the country by Paul Wice in 1970 was that of overcrowding.

	Capacity	Population on Day Visited
Atlanta (Fulton County Jail)	575	766
Indianapolis (Marian County Jail)	640	845
Philadelphia (City-County Jail)	800	2,000
St. Louis (City Jail)		70-100

This study verified that two-thirds of the nation's jails are overcrowded. It is not a characteristic which is unique to large urban jails, but it's symptomatic of jails in all types of communities. Cities with a population of over 200,000 had a more common incidence of overcrowding

(85%) than cities of under 200,000 population where 45 percent of the cities reported overcrowded conditions.[2]

All of the professional groups surveyed in Wice's study agreed that there existed overcrowded conditions in the jails except for one. The judiciary resulted in an agreement percentage more than ten points off of the norm. Wice found it distressing to have such an influential group in the administration of bail being so cautious about the crowded conditions. "Since the Judge's decision as to bail amount may be the most important factor in the defendant's chance for pretrial freedom, it is hoped that they would be more aware of the jail conditions facing those unable to raise the required amount."[3]

The effects of these overcrowded conditions according to the American Correctional Association is that the physical structures of these jails cannot adequately house the average daily inmate population. Besides the shortage of physical space, there is also a lack of custodial personnel and subsequent supervision. Hence, "overcrowding, sexual perversion, idleness, gambling, and strongarm tactics by inmates have resulted."[4]

Overcrowding is only one of the discomforts suffered by the prisoners in these detention facilities. They are typically quite old and even if they are relatively new, they tend to age quite rapidly. For example, the Washington jail was built in 1872, the Philadelphia

Holemsburg Prison in 1896. In Omaha, the Douglas County jail was built in 1910, Clearview minimum security jail in 1927.[5]

These facilities have seen few improvements over the years and the same odors still permeate the new as well as the old jails. Nearly all jails are arranged into long cell blocks with a number of dormitory like cells or just one large dormitory area. Each cell houses approximately forty inmates and is supplied with a few floorlockers and toilet facilities.

The pretrial detention facilities are both antiquated and poorly facilitated. Each has a visitation set up as well as sanitary and medical facilities. Clearview, the minimum security jail also has recreational and educational opportunities not offered to inmates in the Douglas County jail.

The detention facilities in Omaha are not unique. They suffer from the inadequacies identified in the Wice study. Overcrowding is an ever present problem. In a 1973 national jail census, the Douglas County jail was overpopulated by 99 people. On the day statistics were recorded for this thesis in August 1976, the Douglas County jail was overpopulated by 37 people.

"Another side effect of the overcrowded conditions found in the pretrial detention facilities is that the jail officials are unable to classify and segregate the prisoners

according to age, seriousness of crime or other criteria."[6] With the lack of space available, the jail officials cannot afford the luxury of classifying and placement of inmates. Many inmates are forced to sleep on floors and when a new inmate arrives he is sent to the first available vacant cell.

Although in the Douglas County Jail medical and visitation facilities exist, they are limited. Inmates are allowed visitors only twice a week during prearranged times. Phone calls are limited to two per week. No education or recreational facilities are found. There are no rehabilitative programs available. A work release program is offered for sentenced prisoners housed at Clearview, where educational release is also occasionally permitted.[7]

There is an obvious need in the Douglas County Jail as well as other pretrial detention facilities for the development of programs designed to keep all pretrial detainees engaged in meaningful activities. The problems caused by the emptiness of the pretrial existence are compounded by the inability of the defendants to obtain help in solving their personal problems and legal problems during their incarceration period.

One of the most significant effects of pretrial detention is the harm which it causes to the preparation of the defendant's defense. A number of studies have shown that defendants held in pretrial detention are more

likely to be found guilty and receive more severe sentences than those who obtain pretrial release.[8]

A Philadelphia study of 946 cases by the University of Pennsylvania Law School found that only 52 percent of the bailed defendants were convicted, compared with 82 percent of those jailed. Among the conficted, 22 percent of the bailed received prison sentences while 59 percent of the jailed defendants received prison terms.[9]

"With so many empirical studies indicating the serious handicaps of pretrial detention in preparing an adequate defense, it was surprising to find so many public officials unwilling to acknowledge this fact." Fifty-seven percent disagreed that such detention was harmful to the defendant's chances. Only one-third were willing to agree the defendant was handicapped during this period of incarceration.[10]

It is obvious that the detained defendant is limited in his relationship with his lawyer by several restrictions imposed on him by the detention facilities. Yet, these facilities are always full or overcrowded.

The jail population during the period of February 1 to July 31, 1976 in the Douglas County Jail in Omaha was consistently very close to full, full, or overcrowded. The population ranged from 108 persons incarcerated to 168. The mean number incarcerated during this time period was

139, the mode 134. The capacity of the facilities in Omaha is 133.

Further review of these statistics obtained from the records of the 11th and Dodge facility show overpopulation to be more of a concern for the male sector of the facility than for the female section. The total capacity for men is 112 for females it is 21. Population statistics collected at a midnight headcount each night in the jail showed that the male facilities were overpopulated 82 percent of the time. The female facilities only 4 percent during the six month study.

These overcrowded facilities discussed in this chapter have proven to have a negative effect upon the defendant at further court proceedings. Do these overcrowded conditions effect other segments of the judicial process? Can an overpopulated jail have an effect on the determination of bail?

CHAPTER IV

THE EFFECT OF JAIL POPULATION ON BAIL

The proceedings for felonious bail settings in Omaha are held in public court soon after a person is indicted. It is the individual's first appearance before a judge, the formal charges are read, a preliminary hearing date is determined, information is presented about the defendant to the judge by the Pretrial Release Project, the defendant's lawyer, the defendant, or at times by the prosecution for the judge's use in determining bail. In the final step of this bail hearing, the judge announces his decision on the amount and kind of bail. This study will attempt to prove that a structural variable, the population of the jail, has an effect on the determination of bail. The study will test the following four hypotheses: (1) The population of the jail is positively related to bail. (2) Bail is positively related to the traditional social variables found in bail studies, i.e., prior record, family ties, offense charged, length of residency in the community, and the accused's employment record. (3) Jail population may also be used as a predictor variable of bail, and (4) Both social and structural variables perform

as a group effecting the determination of the amount of bail set for the accused.

Methodology

The present study is based on 568 bail settings observed from February 1 to July 31, 1976 in Omaha Municipal Court. In each case, an observer was positioned sufficiently close to the bench to enable recording on a specially prepared data sheet, the information presented the judge for his use in making the determination for bail. If information was missed by the observer, it was later obtained from either the district attorney, the prosecution, or the Pretrial Release Project. All data recorded were verified at the end of the study with the records kept by the Municipal Court Office of Records.

For each case, the following information was collected: the sex and race of the defendant, their age, the crime(s) with which they were charged, the accused's criminal record, whether or not they were employed, as well as their length of residency in Douglas County, their family ties to the community, whether or not a recommendation for bond was made by the Creighton Pretrial Release Project, the person initially suggesting the kind and amount of bail, whether or not the accused was represented by a public defender or private attorney, the preliminary hearing date, and finally, the kind and amount of bail set, including any specific conditions determined.

The study also includes a day by day record of the number of people incarcerated in the county jail, either awaiting further stages of their adjudication, or serving minor sentences. This information was obtained by reviewing the records kept by the county jail on 11th and Dodge and recording on a data sheet the number of men, the number of women, and the total number of people incarcerated for each particular day. The jail population count also included defendants who were part of the work release program and those in the hospital. From the data sheets the information was categorized.

The manner in which the variables were operationalized for the study is discussed below.

Four categories were established for severity of the prior record of the defendant. These were: no record, minor record including traffic violations and minor misdemeanors, moderate record consisting of not more than one felony conviction, and major record consisting of more than one felony conviction.

A total of 16 categories were initially established for the offense charged. These were assault, burglary, carrying a concealed weapon, forgery, larceny, receiving stolen property, drug related offenses, breaking and entering, uttering forged instruments, auto theft, stabbing, homicide, robbery, sexual assault, other minor and other major offenses. The sixteen categories were then combined

into the following seven categories as used by Ebbesen and Konecni (1975): (a) victimless crimes (drug possession), (b) nonviolent crimes with nonspecific victims (forgery), (c) nonviolent minor crimes with specific victims (burglary, theft), (d) nonviolent but major crimes with specific victims (sale of drugs, robbery), (e) crimes with the potential of violence or death (possession of deadly weapon), (f) violent crimes not resulting in death (kidnapping, rape, assault), and (g) homicide.

The length of residency was categorized as: (1) 0 to 3 months, (2) 4 to 6 months, (3) 7 to 9 months, (4) 10 to 12 months, (5) 1 to 2 years, and (6) over 2 years. The family ties to the community was recorded as to whether the accused resided with or had close contact with (1) their immediate family, (2) relatives, other than immediate family, in the community, (3) friends in the community and (4) no relatives or family ties in the community.

The defendant's employment record was categorized as (1) employed over 2 years, (2) employed from 1 to 2 years, (3) employed for less than 1 year, (4) unemployed. Sex was broken down to male and female. Four categories were established for race: (1) Caucasian, (2) Negro, (3) Indian, and (4) other. Age consisted of six levels: (1) 15 years and under, (2) 16 to 20 years, (3) 21 to 25 years, (4) 26 to 30 years, (5) 30 to 40 years, and (6) 41 years and over.

In all of the cases the judge announced the amount and kind of bail to be set so that it could be recorded. This oral statement was used as the actual bail set, no account was made of bail later changed or of cases dropped.

These data were then transferred from the data sheets to computer cards. The data were analyzed using the SPSS multiple regression subprogram. The multiple regression was chosen because it examined the relationship between the independent variables listed and categorized above with the dependent variable, bail. It provides analysis of the degree of the linear dependence between the variables. Multiple regression also provides additive results, separating the independent variables which have the most significant relationships with the dependent variable, enabling analysis between the total set of independent variables, or a subset.

Findings

The purpose of this study was to determine if more than just the social variables, already proven relevant at bail settings by previous research, are effecting the determination of bail for the defendant. An organizational variable or perhaps it would be better called a structural variable was added, that of jail population. A jail has a designated capacity, it can only hold a certain number of defendants and even in an overcrowded condition, it still has a limit. Does this limit, or this condition of

overcrowding enter into the determination of bail as do the other social variables?

Descriptive Findings

During this study from February 1 to July 31, 1976, 568 bails were set in felony bail setting in the city of Omaha. Of these 568 defendants who entered the adjudication process at arraignment, 507 or 89 percent were males, 61 or 11 percent were females.

During the period studied, the average number of bails set each day was eight. The bail hearing varied in length daily according to the number of cases and the time spent on each case by the judge. There were no months where there were significantly less bails set than other months. The number of cases arraigned was consistent from month to month.

Of the 568 defendants that were arraigned, 46 percent were Caucasian, 46 percent were Negro, 3 percent were Indian and 2 percent were other, including Mexican and foreign.

The findings in the category of age fit consistently with one of the theories on the rising crime rate, that there are more people between the ages of 18 and 25 committing crimes because of the baby boom of the 1950s. This is illustrated below where 76 percent of those arraigned were between 16 and 25.

TABLE II

The Age of Defendants Arraigned

Age (years)	Frequency	% of Total
15 and under	17	3%
16 - 20	192	34%
21 - 25	239	42%
26 - 30	81	14%
31 - 40	23	4%
41 and over	16	3%
Total	568	100%

The charges defendants were arraigned on most frequently were burglary and possession of controlled substances with the intent to sell or deliver. The next most common were uttering forged instruments and robbery. The distribution is as follows: assault 3 percent, burglary 17 percent, carrying a concealed weapon 2 percent, forgery 1 percent, larceny 4 percent, receiving stolen property 4 percent, possession of controlled substance 16 percent, breaking and entering 7 percent, auto theft 2 percent, stabbing 3 percent, homicide 3 percent, robbery 9 percent, sexual assault 3 percent, and other 1 percent.

Fifty-three percent of the defendants had no previous record, 20 percent had minor records, 12 percent had

moderate records, and 13 percent had major previous criminal records. Over half of the defendants were unemployed, 64 percent, and over half, 52 percent, lived in Douglas County for over two years.

Of the cases arraigned, 58 percent lived, or had very close ties with their immediate families. Fifty-nine percent of the defendants were single, 23 percent married and 13 percent divorced.

A frequency distribution for the category of bail supported the findings of the experimental bail projects of the late 1960s. In this study, in a court where there also existed a Pretrial Release Program run by Creighton University, there were a large number of ROR's and 10 percent cash plans granted. In this sample, 57 percent of the population received a ROR or a bail amount under $1,000 where under the 10 percent plan the defendant paid only $100 to obtain pretrial freedom. Cash bail was the most predominant type of bail granted. In 67 percent of the cases the defendant had to post a cash bail, in 30 percent of the cases a straight ROR was granted.

The offense charged has often been cited as being one of the most significant predictors of the amount and kind of bail to be set. It is a variable often criticized because the determination of bail rests more heavily on the charge as opposed to characteristics unique to the offender

TABLE III

Bail Amounts Granted at Arraignment

Bail Granted (dollars)	Frequency	Relative Frequency
ROR	185	32.6%
to 1,000	140	24.8%
to 2,000	66	11.6%
to 3,000	10	1.8%
to 4,000	2	.4%
to 5,000	64	11.3%
to 7,000	6	1.1%
to 10,000	48	8.5%
to 20,000	16	2.8%
to 50,000	26	4.6%
to 100,000	5	.9%
no bail	4	.6%
Total	568	100%

TABLE IV

Offense by Bail Amount Granted

Offense	Amount of Bail (thousand dollars)								
	ROR	1	2	3-4	5-9	10	20	50	no bail
Assault	6	7	4	0	8	6	1	2	0
Burglary	51	37	7	0	11	8	1	0	0
Concealed Wep.	2	3	4	1	0	1	2	0	0
Forgery	0	1	0	0	0	0	0	0	0
Larceny	8	15	6	0	4	0	0	0	0
Rec. St. Prop.	13	6	1	1	3	0	0	0	0
Possession	27	55	5	3	9	4	4	0	0
Break & Ent.	23	7	4	1	11	2	2	0	0
Forged Inst.	20	29	11	2	8	3	2	0	0
Other Minor	29	20	2	4	4	2	0	0	0
Auto Theft	4	4	2	0	0	2	0	0	0
Stabbing	0	0	0	0	0	2	0	0	0
Homicide	2	0	2	0	2	3	0	3	4
Robbery	4	17	1	1	8	9	5	6	0
Sexual Assault	3	1	4	1	3	1	7	4	0
Other Major	3	2	1	0	0	0	3	2	0
Total	195	204	56	14	71	43	24	17	4

such as his risk of flight. In this study the amounts of bail for each offense is fairly consistently distributed.

Omaha has jail facilities for 133 people, 112 spaces for men and 21 for women. The duration of this study found the total number of people incarcerated fluctuating between 108 and 168 people. The average jail population was 139 persons, the mode 134. Eighty-two percent of this six month study, the jail was overcrowded. Close to 25 percent of the time it was severely overcrowded with more than 150 incarcerated.

Overcrowded conditions was by far a worse problem for the male section of the jail than for the female section. The male sector was overcrowded 82 percent of the time, the female section only 2 percent of the time.

It is interesting to note in Table V the frequency of ROR's and low cash bails with different degrees of populated jail conditions.

Analysis and Findings

This study is divided basically into two segments. The first initially reviews the findings relevant to the interrelationships between the variables. It looks at the relationships between bail and the independent variables and also the interrelationships between the independent variables. The second segment reports the findings of a multiple regression analysis that was designed to determine the proportion of the variance in bail that can be

TABLE V

Jail Population by Bail

Population	ROR	Bail (thousand dollars)					
		1	2	3-5	6-10	over 15	no bail
108 - 120	18	1	4	6	4	6	0
121 - 140	100	77	39	38	24	21	2
141 - 160	61	60	21	28	19	11	2
over 161	8	4	5	6	2	4	0
Total	187	142	69	30	49	42	4

accounted for by the predictor variables, as well as an evaluation of the relative importance of the several independent variables.

The first general hypothesis tested stated that the population of the jail is positively related to the amount of bail determined. The zero-order correlations provided in Table VI show that there is a low, negative correlation between the independent variable of total jail population and bail ($r = -.051$).

The second hypothesis predicted that bail was positively related to the traditional social variables used in the study. The data on Table VII show the variable with the most important relationship found with bail is the accused's prior record ($r = .341$). The second

TABLE VI

Zero-Order Correlations with Bail

Variable	Simple r
prior record	.341
offense charged	.254
employment status	-.051
length of residency	-.171
sex	-.075
race	-.057
age	.026
date	-.023
jail population	-.051
community ties	-.057

N = 368

most important relationship found is with the offense charged (r = .265). With the exception of these two independent variables, no other independent variable had a significant relationship with bail.

From the preceding analysis of hypotheses 1 and 2 in the first segment, we may predict that hypotheses 3 and 4, which are built on the preceding analysis will also be rejected. This segment of the analysis evaluates the relative importance of the several predictors of bail (the independent variables) and a specification of the proportion

of variance in bail that may be attributed to the influence of the entire set of predictor variables.

In order to determine the quality of the predictors of bail that may be obtained from the 10 independent variables and an initial means of examining the relative importance of each predictor variable, a multiple regression equation was computed to test the following hypotheses: hypothesis 3 which anticipated jail population was a predictor variable of bail and hypothesis 4 that all independent variables in the study performed as a group effecting the determination of the bail set for the accused.

Review of the statistics presented in Table VII show the only predictor variables significant in the standard regression at the .05 level are the accused's prior record and the offense charged. The independent structural variable, jail population is not found to be significant. Nor do the coefficients support hypothesis 4 that all of the independent variables perform as a group effecting the determination of bail. Both hypotheses 3 and 4 are rejected.

Discussion

The purpose of this study was to test an idea often stated as fact in the Criminal Justice System, yet never studied empirically. This is a concern of all fields of research, but an important concern when liberty for human beings is at stake.

TABLE VII

Multiple Regression Analysis

Variable	MR	R^2	R^2 Change	B	F
prior record	.341	.116	.116	.252	39.140*
offense	.459	.211	.037	.205	27.703*
jail population	.496	.246	.005	-.072	2.965
employment	.501	.251	.005	-.061	2.566
length of res.	.505	.255	.003	-.052	3.240
sex	.507	.257	.002	-.056	2.188
date	.513	.264	.000	-.025	0.398
community ties	.514	.264	.000	.021	0.262
race	.514	.265	.000	-.018	0.235
age	.515	.265	.000	.016	0.148

N = 568

*Significant at the .05 level.

Jail capacity has often been mentioned as a relevant factor in the decision on bail. To the author's knowledge, it has not been previously tested empirically. In the present study it did not prove a variable which significantly effected the determination of bail. It accounted for only 24 percent of the variance in bail. None of the predictor variables showed a strong effect on bail, nor do they appear to have a significant effect as a group. There is only a slight variation in the multiple regression coefficient when all the variables are accounted for.

The results of this study show weak support for previous findings that certain independent variables are more significant in the determination of bail. Prior record, family ties, the offense charged, employment status and ties to the community have all emerged as important variables from the bail projects of the 1960s as predictors of risk of flight. They were all taken into consideration in the standards set up for bail such as the 1974 Bail Bond Bill in Nebraska, yet in the present study they did not prove strong predicting variables.

Summary and Conclusions

The purpose of this study was to assess the extent to which the independent variable, jail population, effected the setting of bail. The study did not provide strong support for further research concerning the structural

variable's influence on bail. Yet as a pioneer study it did raise many questions and did provide some interesting findings.

The social variables included in the study are presented to the judge for his use in determining bail for each defendant. The information is public and communication of it is done directly to the judge. The structural variable, the jail population is not given directly to the judge at bail hearings. At best, if at all, the communication of an overcrowded or undercapacity population would reach the judge by indirect means. Perhaps by a comment made by jail personnel or at a Mayor's Council meeting when they discuss the overcrowded, poorly facilitated jail in Omaha and stress a need for a new and larger facility. Will these facilities ease the overcrowded conditions of the jail, or will it only provide an opportunity for the correctional system to again increase its boundaries and encompass more individuals?

Even if the lines of communication are difficult to determine, the population of the jail fluctuated by 60 people during the six month period, with an average population of 138 people. Eighty-two percent of the time the jail was overcrowded, 25 percent of the time it was severely overcrowded. This total from the jail count does not even include migrant farm workers that are held in the facilities until enough are collected to warrant the expense of

a bus to return them to Mexico, further adding to the deplorable, crowded conditions.

Perhaps this study should have looked instead to prove that the numbers in the jails are being maintained by the bails granted, as opposed to the jail size effecting bail. The jail was never severely underpopulated, but remained at a rather high number at all times.

Characteristics of the defendants proved very interesting and warrant mention. The number of Negro defendants was almost equal to the number of Caucasian defendants in the study. While data were being collected, the majority of the defendants seemed to be Black much more often. There were 58 ROR's granted Negro defendants with no prior record and 68 granted caucasians with no prior records. There was also a low number of women in the overall study, only 11 percent of the sample represented in court. Eighty-nine percent were men. The crimes the women were most commonly charged with were uttering forged instruments, insufficient fund checks and possession of controlled substances, minor offenses. This does not support the recent theories of Freda Adler, that the crimes women are committing are becoming more and more similar to those committed by men.

Finally, close review of the data obtained in this study on bail show practically identical findings to the study by Arthur Beeley in 1929 in Chicago. Seventy-eight percent of the defendants in his study were under 25 years

old, 53 percent had no prior records. Fifty-two percent had lived in Omaha for over six years, 73 percent were single and 64 percent were unemployed. Professor Beeley was one of the first to pioneer the concept of release on own recognizance, it is interesting in a study on bail 47 years later to conclude with findings on the characteristics of offenders identical to those found in 1929.

CONCLUSION

In critiquing the contemporary bail system a distinction must be made between the weakness of the way the courts have implemented the statutes which they are theoretically suppose to follow and a criticism of the statutes themselves.

The statutory purpose of bail is to assure the appearance of the defendant at his trial. It is not to be used as a punishment against a defendant believed to be guilty. Because of the unanimity by the judiciary, prosecution, and other officials, in their perspective toward the defendant within the Criminal Justice System, public officials not only manipulate bail in an informal way of preventive detention, but they also ignore various statutory instructions to the judiciary as to how to conduct a proper bail hearing.

Little time is spent on each defendant to determine his bail, to determine his chances of pretrial freedom. A decision which should be an individualized one has become largely a mechanical task for a judge. During this study bail settings were observed in felony court where the judge's decision was made on the premises that it was his

duty to protect the public. Although public protection may have merit, it is not a statutory purpose of bail.

The experience of collecting data daily in these felony bail hearings in Omaha Municipal Court has led to many conclusions about the lower court adjudication process, perhaps they could best be called prejudices. Seldom are the defendants treated with compassion or respect. They are hauled down to court in vans from the police station, held in a cell with several other defendants until it is their turn in line to be arraigned. As previously stated, very little time is spent by the judge in each particular case. The information is presented to the judge about the defendant and a determination is made on the bail to be granted. Very seldom does the defendant even speak during his arraignment or the judge speak to the defendant. When the bail is granted the defendant, if he can meet the financial conditions of his bail, he is released, if not, he is brought upstairs to jail to await further court proceedings. Realizing the "mechanicalness" of the procedure and the lack of individual concern, it is understandable why there are so many critics of the bail system.

Much more research needs to be done on the setting of bail. The research needs to be empirical to lessen the chances of error, to lessen the number of myths and unproven assumptions so prevalent in the Criminal Justice System. More research needs to be done on the jails, on the

effects of the defendants who can't post bond and are held in these jails, on bargain justice, and on the disposition of cases, whether the defendant was bailed or not. The judge's decision making process in granting bail, and interactions in the courtroom, all need further empirical research.

The need for empirical studies in the area of bail are overwhelming, the need for replication of already existing studies on bail is pertinent. If bail proceedings, characteristics of the defendants, and similar problems still plague the bail system today as they did at the turn of the century, perhaps the answer is as Ronald Goldfarb contended, that research is needed and the public must be educated of the findings. The only other alternative would be the abolishment of the bail system as it now exists.

BIBLIOGRAPHIC NOTES

BIBLIOGRAPHIC NOTES

Chapter I: The History of Bail

[1]"Bail: An Ancient Practice Reexamined," Yale Law Journal 70 (1966): 966-77.

[2]"Bail: An Ancient Practice Reexamined" (1966).

[3]"The Unconstitutional Administration of Bail," Crim Law Bulletin 8 (1972): 459-506.

[4]Vera Foundation, "Toward Justice for the Poor: The Manhattan Bail Project," Criminologica 2 (1964).

[5]Paul B. Wice, Freedom For Sale (Lexington, Mass.: Lexington Books, 1975). D. Wilson, "Bail Scandal," New Statesman 81 (1971): 549-50.

[6]Paul B. Wice, "Bail Reform in American Cities," Crim Law Bulletin 9 (1973): 770-97.

[7]Wice, 1975: p. 98.

Chapter II: Theoretical Perspectives

[1]Arthur L. Beeley, The Bail System In Chicago (Chicago, Illinois: The University of Chicago Press, 1927).

[2]Beeley, 1927: pp. 154-156.

[3]Raymond Moley, Our Criminal Courts (New York: Minton, Balch, 1930), p. 51.

[4]Moley, 1930: p. 61.

[5]Moley, 1930: p. 69.

[6]Caleb Foote, "The Bail System and Equal Justice," Federal Probation 23 (1959): 43-48.

[7]Foote, 1959: p. 46.

[8]Ronald Goldfarb, Ransom: A Critique of the American Bail System (New York: John Wiley and Wons, Inc., 1965).

[9]The President's Crime Commission on Law Enforcement and the Administration of Justice, 1968.

[10]Junius L. Allison, "Poverty and the Administration of Justice in Criminal Courts: Before Illinois Academy of Criminology, Chicago, April 26, 1963," Journal of Crim Law 55 (1964): 241-45.

[11]Vera Foundation, "Toward Justice for the Poor: The Manhattan Bail Project," Criminologica 2 (1964).

[12]Eugene A. Landis, "Survey of Bail in the U.S.: Historical Development, Problems, Reforms, and Importance to the Police Profession," Police 10 (1966).

[13]Vera Foundation, 1964.

[14]David J. McCarthy, "Practical Results of Bail Reform," Federal Probation 29 (1965): 10-14.

[15]All statistics on the D.C. Bail Project are taken from Wice, 1975.

[16]Goldfarb, 1968.

[17]Goldfarb, 1968: p. 187.

[18]These guidelines were obtained from the Honorable Robert C. Vondrasek in a personal interview on Dec. 13, 1976.

Chapter III: Pretrial Detention Facilities

[1]Wice, 1975: p. 81.

[2]Wice, 1975.

[3]Wice, 1975: pp. 84-85.

[4]President's Crime Commission On Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society (Avon Books, 1968), p. 423.

[5]Wm. A. Goldberg, "The Paradox of the County Jail: Over and Under Populated," Amer. County 36 (1971): 124-30.

[6]Wice, 1975: p. 88.

[7]This information was obtained from Lt. Kenneth Harris of the 11th and Dodge jail in Omaha.

[8]Marshall Houts, From Arrest to Release: An Analysis of the Administration of Criminal Justice (Springfield, Illinois: C. C. Thomas, 1958).

[9]Freed and Wald, 1966: p. 49.

[10]Wice, 1975: p. 92.

BIBLIOGRAPHY

BIBLIOGRAPHY

Allison, Junius L. "Poverty and the Administration of Justice in Criminal Courts: Before Illinois Academy of Criminology Chicago, April 26, 1963." Journal of Crim Law 55 (1964): 241-45.

Ares, Charles and Sturz, Herbert. "Bail and the Indigent Accused." Crime and Delinquency 8 (1962): 12-20.

Beeley, Arthur L. The Bail System in Chicago. Chicago, Illinois: The University of Chicago Press, 1927.

Bethell, T. "Criminals Belong in Jail." Washington Monthly 7 (1976): 5-16.

Cavan, Ruth. Criminology. New York: Crowell, 1962.

Clayton, James E. "Bail Too Often Means Jail." Washington Post, May 24, 1964.

Correctional Association of New York. The One Hundred and Seventeenth Annual Report, 1961. 130 p (Legislative document (1962) no. 100). New York, 1962.

Desmond, Charles S. "Bail, Ancient and Modern." Buffalo Law Review 1 (1952): 245-48.

Ebbesen, E. B. and Konenci, V. J. "Decision Making and Information Integration in the Courts: The Setting of Bail." Journal of Personality and Social Psy 32 (1975): 805-21.

Ervin, Sam J. "National Conference on Bail and Criminal Justice: Statement Before Senate." Congressional Record (May 26, 1964): 11523-24.

Foote, Caleb. "The Bail System and Equal Justice." Federal Probation 23 (1959): 43-48.

Forman, Soloman. "Atlantic Co. 10% Cash Bail Project, Feb 14, 1972-73." Criminal Justice Q 1 (1973): 185-200.

Goldberg, Wm. A. "The Paradox of the County Jail: Over and Under Populated." Amer. County 36 (1971): 124-26.

Goldfarb, Ronald. Ransom: A Critique of the American Bail System. New York, New York: John Wiley and Sons, Inc., 1965.

Houts, Marshall. From Arrest to Release: An Analysis of the Administration of Criminal Justice. Springfield, Illinois: C. C. Thomas, 1958.

Kennedy, Robert F. "Address Before National Conference on Bail and C. J. May 29, 1964." Congressional Rec. (July 24, 1964): 16381-2.

Kinsella, Nina. "The Untried Prisoner." Prison Journal 18 (1938): 414-18.

Kramer, Jack. "Behind Bars: Critics, Inmates Assert That The Nation is Ignoring Overcrowding and Poor Facilities in Small Jails." Wall St. Journal 180 (1972): 40.

Lancaster, Hal. "Most Luxurious Jail in U.S." Wall St. Journal 187 (April 27, 1976): 1.

Landau, Jack C. "Warren Appeal for Reform of Bail System in Courts." Washington Post (May 28, 1964): C7.

Landes, W. M. "The Bail System." Journal of Leg. Studies 2 (1973): 79-105.

Landis, Eugene A. "A Survey of Bail in the U.S.: Historical Development, Problems, Reforms, and Importance to the Police Profession." Police 10 (1966): 12-56.

Large, Arlen J. "Quest for a Fair, Effective Bail System." Wall St. Journal 168 (1968): 14.

Locke, J. W. "U.S. National Journal of Standards. Compilation and Use of Crim Court Data in Relation to Pretrial Release Defendants: Pilot Study." Supt. Docs. Ag. 1970 no. C13. 46: 535.

Meyer, H. H. "Constitutionality of Pretrial Detention." Georgetown Law Journal 60 (1972): 1139-94.

McCarthy, David J. "Practical Results of Bail Reform." Federal Probation 29 (1965): 10-14.

Moley, Raymond. Our Criminal Courts. New York: Minton, Balch, 1930.

National Council on Crime and Delinquency. New York Citizen Council Dept. of Correction, City of New York: A Report to the Board of Estimate, Feb. 24, 1964.

New York City, NY. Office of the Mayor Deputy Mayor. "The House Detention for Women--a Plan to Reduce the High Census" by Charles H. Tenney. New York (June 3, 1963): 11-14.

President's Commission on Law Enforcement and Administration of Justice. The Challenge of Crime in a Free Society. Avon Books, 1968.

Ralph, C. H. "Prison Without Trial." New Statesman 69 (1965): 636.

Samuels, Gertrude. "Bail: Justice for Far From All." New York Times (Aug. 19, 1962): 13.

Silverstein, Lee. "Bail in the State Courts." Minnesota Law Review 50 (1966): 621-52.

Smith, A. L. Corrections in Calif. Its Realities; excerpts from addresses before Board of Directors of the No. Cal. Service League. April 4, 1963.

Stephen, James F. "Criminal Procedure from the Thirteenth to Eighteenth Century." Select Essays in Anglo-American Legal History Vol. 2. Boston: Little, 1908.

Stonehouse, J. "Thoughts on Bail." New Statesmen 90 (1975): 271.

The First Annual Report of the Nebraska Commission on Law Enforcement and Criminal Justice. "A Number of Jails in Nebraska Are Not Much Beyond the Chains and Shackles Era." 1973.

U.S. Law Enforcement Assistance Administration National Criminal Justice Information and Statistics Service. The Nation's Jails: A Report on the Census of Jails from 1972 Survey of Inmates in Local Jails. May 1975 Rep. #sd-j-4.

Vera Foundation. "Toward Justice for the Poor: The Manhattan Bail Project." Criminologica 2 (1964).

Vondrasek, The Honorable Robert C. Presiding Judge Omaha Municipal Courts. Interview, December 13, 1976.

Wald, P. M. and Fraed, D. J. "The Bail Reform Act of 1966: A Practioners Primer." Am. Bar Ass. Journal 52 (1966): 940-45.

Washington Dept. of Instns Div. of Adult Corrections. Minimum Jail Standards and Manual of Operating Proc. for Local Jails. 1969.

Wice, Paul B. Freedom for Sale. Lexington, Mass.: Lexington Books, 1975.

_____. "Bail Reform in American Cities." Crim Law Bulletin 9 (1973): 770-97.

_____. U.S. LEAA Nat. Inst. of Law En. and C. J. Bail and Its Reform: A National Survey. Supt. Docs. Oct. 1973.

Wilson, D. "Bail Scandal." New Statesman 81 (1971): 549-50.

Wizner, Stephen. "Bail and Civil Rights." Law in Transition Q 2 (1965): 111-24.

Wright, B. New York State Supreme Court Judge Interview. Fortune Society, Jan. 10, 1973.

"American Jails: How Bad Are They?" U.S. News 78 (June 23, 1976): 56-58.

"Bail: An Ancient Practice Reexamined." Yale Law Journal 70 (1966): 966-77.

"Criminal Procedure: Excessive Bail." Am. Bar Ass. Journal 50 (1964): 377-8.

"Judicial Discretion in Granting Bail." St. John's Law Review 27 (1952): 56-78.

"U.S. Bail Reform Act of 1966." Iowa Law Review 53 (1967): 170-94.

"The Unconstitutional Administration of Bail." Crim Law Bulletin 8 (1972): 459-506.

APPENDIX A

SAMPLE DATA SHEET

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SAMPLE DATA SHEET

Sex: Male
Female

Race: Negro
Indian
Caucasian
Other

Age:

Offense:

Date: _____

Judge: _____

Public defender

Private attorney

Preliminary Hearing Date: _____

Previous Record:

No Record
Minor (assault, burglary, concealed weapon, forgery, larceny, rec. stolen prop.)
Major (homicide, forcible rape, robbery)

Employment:

employed
unemployed

Length of residency in county:

Relatives in county with which defendant resides:

Married
Single
Divorced
# of dependents

Spouse
Parents
Grandparents
Children

Pretrial Candidate: Yes
No
If not, why?

# of points awarded _____
points contested?
by whom?

Person initially suggesting bail amount:

judge
public defender
prosecutor

Counter Suggestions:

Judge

public defender

prosecutor

Bail set:

10% bond $_____

Surety bond $_____

ROR

Specific Conditions:

Bail contested:

Bail Paid:

Remained in custody: