

Introduction

The bail system in the United States determines whether an accused person in a criminal proceeding will be released or jailed in the period between his arrest and trial. In the typical case, the accused is brought by the police before a committing magistrate or judge who will set bail in a monetary amount. The legal theory underlying this procedure is that the bail will be sufficient to insure the appearance of the defendant at trial. If he is able to post bond in the bail amount, or to pay a bondsman to post it for him, the accused is released. If he is financially unable to make bail, he is detained in jail.

Each year, the freedom of hundreds of thousands of persons charged with crime hinges upon their ability to raise the money necessary for bail. Those who go free on bail are released not because they are innocent but because they can buy their liberty. The balance are detained not because they are guilty but because they are poor. Though the accused be harmless, and has a home, family and job which make it likely that—if released—he would show up for trial, he may still be held. Conversely, the habitual offender who may be dangerous to the safety of the community may gain his release.

The National Conference on Bail and Criminal Justice is designed to examine the bail system, review its criteria for pretrial release, consider the law enforcement stakes involved, assess the human as well as monetary costs of pretrial detention, and explore the available alternatives. Launched on June 1, 1963 with the assistance of a grant under Public Law 87-274 from the President's Committee on Juvenile Delinquency and Youth Crime, the Conference seeks to focus public attention on the defects in the bail system, the need for its overhaul and the methods of improving it. It plans to do this through a national and several regional conferences, through staff assistance to communities which request aid, and through publications dealing with various aspects of pretrial release and detention.

The Conference is co-sponsored by the Department of Justice, under the leadership of Attorney General Robert F. Kennedy, and the Vera Foundation, a non-profit organization created by Louis Schweitzer. The participation of the Justice Department, as the federal system's chief law enforcement agency, reflects the belief that a system which conditions the accused's liberty solely on the amount of money in his pocket, rather than on the likelihood that he will return for trial, denies equal justice and interferes with the proper functioning of our criminal process. The Vera Foundation's participation reflects its desire to make available to communities throughout the United States the techniques and experience it has developed in pioneering a new approach to the problem of bail through the Manhattan Bail Project in the courts of New York City.

Although the Vera Foundation's example paves the way for remedial action against bail abuses elsewhere, changes cannot be made overnight. The mechanics of reform require careful inquiries into the nature of existing bail practices and the factors which underlie current decisions to release or detain. A number of communities have already undertaken revisions of their local bail systems. Experiments are being conducted in many areas seeking ways to diminish unnecessary pretrial detention without impairing the effectiveness of the community's law enforcement efforts.

This handbook is designed to provide a guide to the present system and a working knowledge necessary to initiate improvements. It deals briefly with the history of bail, the way it operates today and the problems it creates. It then describes the range of alternatives which emerge from proposals for reform and projects already under way. The concluding chapter deals with the special problems created by the pretrial detention of children in juvenile court proceedings.*

* Time did not permit this report to examine the significant problem of bail pending appeal. The issues involved in post-conviction bail differ from pretrial bail in several fundamental ways. The subject in the federal courts is dealt with in an unpublished Report of the Junior Bar Section Bail Committee (D. C. Bar Assn., May 1964), and in articles cited in the bibliography to this report.

Chapter I

THE HISTORY AND THEORY OF BAIL

A. England

Bail originated in medieval England as a device to free untried prisoners. Disease-ridden jails and delayed trials by traveling justices necessitated an alternative to holding accused persons in pretrial custody. At first sheriffs exercised their discretion to release a prisoner on his own promise, or that of an acceptable third party, that he would appear for trial. If the defendant escaped, the third party surety was required to surrender himself; hence he was given custodial powers over the accused. Bail literally meant the bailment or delivery of an accused to jailors of his own choosing. In time, sureties—who were usually required to be property owners—were permitted to forfeit promised sums of money instead of themselves in the event the accused failed to appear.

In 1275 the Statute of Westminster undertook to regulate the discretionary bail power of sheriffs by specifying which offenses were bailable and which were not.¹ Eventually, the sheriff's bailing functions were transferred to justices of the peace.² Common law rules for exercising their discretion were based upon the nature of the charge, the character of the accused and the weight of the evidence.³ Later English statutes elaborated the procedure for obtaining bail.⁴ And in 1688 the Bill of Rights established protection against excessive bail.⁵

In 17th century England few defendants were sufficiently mobile to flee, and the consequences of flight—outlawry and confiscation—were harsh enough to make it an uncommon

¹ 3 Edw. 1 c. 15.

² 1360-1361, 34 Edw. III.

³ Stephen, *A History of the Criminal Law of England* i, 233-4 (1883).

⁴ 1 & 2 Philip and Mary c. 13 (1554).

⁵ 1 Wm. & Mary 2, c. 2 sec. 1, 2 (10).

occurrence. In addition, most bailed offenders were known personally to the sheriff or justice of the peace and had reputations for trustworthiness, attested to by their ability to get third persons of local esteem as sureties.

In England today, the bail surety relationship continues to be a personal one. At the same time, the discretionary nature of bail is sufficiently flexible to permit denial in cases where the magistrate believes that the defendant is likely to tamper with the evidence or commit new offenses if released.⁶

B. America

The development of bail rights and obligations in America has followed a different course. The United States Constitution does not specifically grant a right to bail. The Eighth Amendment states only that "Excessive bail shall not be required." Prior to ratification of the Bill of Rights, however, Congress provided in the Judiciary Act of 1789 that "upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death . . ." It went on to make bail in capital cases discretionary, depending upon the "nature and circumstances of the offense, and of the evidence, and usages of law."⁷ Substantially the same right was guaranteed by state constitution or statute in all but seven states.⁸ This

⁶ Sullivan, Proposed Rule 46 and the Right to Bail, 31 Geo. Wash. L. Rev. 919, 922-26 (1963); Bail and Bad Character, 106 The Law Journal 22 (1956).

⁷ 1 Stat. 73, 91 (1789); *Carlson v. Landon*, 342 U.S. 524 (1952).

⁸ Thirty-nine states guarantee a right to bail before conviction in noncapital crimes: Ala. Const. art. I, §16; Ariz. Const. art. II, §22; Ark. Const. art. II, §8; Cal. Const. art. I, §6; Colo. Const. art. II, §19; Conn. Const. art. I, §14; Del. Const. art. I, §12; Fla. Declaration of Rights §9; Hawaii Rev. Laws §256-3 (1955); Idaho Const. art. I, §6; Ill. Const. art. II, §7; Iowa Const. art. I, §12; Kan. Const. Bill of Rights §9; Ky. Const. §16; La. Const. art. I, §12; Me. Const. art. I, §10; Minn. Const. art. I, §7; Miss. Const. art. III, §29; Mo. Const. art. II, §24; Mont. Const. art. III, §19; N. H. Rev. Stat. Ann. §597:1 (1955); N. D. Const. art. I, §6; Nev. Const. art. I, §7; N. J. Const. art. I, §11; N. M. Const. art. II, §13; Ohio Const. art. I, §9; Okla. Const. art. II, §8; Pa. Const. art. I, §14; R. I. Const. art. I,

absolute right to bail in a country with a virtually limitless frontier called for the development of new techniques to supplement the private surety who would personally guarantee to produce his bailee. As a result, the institution of the bondsman arose to take over the function of posting bail. In return for a money premium, he guaranteed the defendant's appearance at trial. In the event of nonappearance, the bondsman stood to lose the entire amount of his bond. For this reason, bondsmen in many jurisdictions required indemnification contracts or collateral from the defendant or his relatives to protect themselves from forfeiture losses.⁹ Selling bail bonds became a thriving commercial adjunct to the judicial function of setting bail.

In the everyday administration of criminal justice in American courts, the legal right of an accused person to bail can usually ripen into pretrial freedom only upon the consummation of a commercial bail transaction. As early as 1912, the Supreme Court recognized that the bondsman's "interest to produce the body of the principal in court is impersonal and wholly pecuniary."¹⁰ At the same time the accused's absolute

§9; S. C. Const. art. I, §20; S. D. Const. art. VI, §8; Tenn. Const. art. I, §15; Tex. Const. art. I, §11; Utah Const. art. I, §8; Vt. Const. ch. II, §32; Wash. Const. art. I, §20; Wis. Const. art. I, §8; Wyo. Const. art. I, §14; Alaska Comp. Law Ann. §69-5-1 (1948).

Four states limit the power to deny bail to treason and murder cases: Ind. Const. art. I, §17; Mich. Const. art. II, §14; Neb. Const. art. I, §9; Ore. Const. art. I, §14.

Three states grant an absolute right to bail only in misdemeanor cases: Ga. Code Ann. §27-901 (1953); Md. Ann. Code art. 52, §13(b) (1951); N. Y. Code Crim. Proc. §553. The Maryland Court of Appeals has adopted rules granting an absolute right to bail in non-capital cases. Md. Rules of Procedure 777a (1962).

Four states allow judges almost complete discretion, in accord with the common law: Mass. Ann. Laws ch. 276, §42 (1956); N. C. Gen. Stat. §15-102 (1953); Va. Code Ann. §§19.1-109-1-124 (1960); W. Va. Code Ann. §6152 (1961).

⁹ Bail: An Ancient Practice Reexamined, 70 Yale L.J. 966, 967-8 (1961).

¹⁰ *Leary v. United States*, 224 U. S. 567, 575 (1912).

right to bail in noncapital cases was steadfastly defended. The reasons are spelled out by Justice Jackson in *Stack v. Boyle*.¹¹

From the passage of the Judiciary Act of 1789 . . . to the present Federal Rules of Criminal Procedure . . . federal law has unequivocally provided that a person arrested for a non-capital offense *shall* be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction . . . Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.

The American judge's discretion in setting pretrial bail in noncapital cases has consistently been interpreted to allow latitude only in determining the bail amount. The opinions in *Stack v. Boyle* make clear several points that underlie the theory of bail today. First, the sole consideration is to ensure appearance at trial:

The right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty . . . Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused . . . Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant.¹²

Second, the fact that some defendants are more likely than others to flee does not condone the denial of bail:

Admission to bail always involves a risk that the accused will take flight. That is a calculated risk

¹¹ 342 U.S. 1, 4 (1951).

¹² 342 U.S. at 4, 5.

which the law takes as the price of our system of justice. We know that Congress anticipated that bail would enable some escapes, because it provided a procedure for dealing with them.¹³

Third, bail cannot be set excessively high:

In allowance of bail, the duty of the judge is to reduce the risk by fixing an amount reasonably calculated to hold the accused available for trial and its consequence. But the judge is not free to make the sky the limit, because the Eighth Amendment to the Constitution says: "Excessive bail shall not be required. . . ." ¹⁴

American judges, unlike their English counterparts, are not authorized to use pretrial bail as a device to protect society from possible new crimes by the accused. Justice Jackson, sitting as Circuit Justice, expressly repudiated such a justification for denying bail or setting it high in *Williamson v. United States*:¹⁵

Imprisonment to protect society from predicted but unconsummated offenses is so unprecedented in this country and so fraught with danger of excesses and injustice that I am loathe to resort to it, even as a discretionary judicial technique to supplement conviction of such offenses as those of which defendants stand convicted.

¹³ 342 U.S. at 8 (separate opinion of Jackson, J.). Rule 46(f) of the Federal Rules of Criminal Procedure outlines the procedures for forfeiture of bond in case of nonappearance.

¹⁴ 342 U.S. at 8 (separate opinion of Jackson, J.).

¹⁵ 184 F.2d 280, 282-3 (2d Cir. 1950). The *Williamson* case involved bail on appeal. Bail following conviction, whether pending sentence or appeal, is not a matter of right under Rules 32 and 46(a)(2) of the Federal Rules of Criminal Procedure. In *Leigh v. United States*, 82 S.Ct. 994 (1962), Chief Justice Warren stated that a denial of bail on appeal would be justified in "cases in which, from substantial evidence, it seems clear that the right to bail may be abused or the community may be threatened by the applicant's release."

Standards for determining the amount of bail necessary to insure a defendant's appearance are often specified by statute or court rule. Rule 46(c) of the Federal Rules of Criminal Procedure provides that

If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the commissioner or court or judge or justice will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail, and the character of the defendant.¹⁶

State appellate courts have laid down comparable criteria:

The factual matters to be taken into account include: the nature of the offense, the penalty which may be imposed, the probability of the willing appearance of the defendant or his flight to avoid punishment, the pecuniary and social condition of the defendant and his general reputation and character, and the apparent nature and strength of the proof, as bearing on the probability of his conviction.¹⁷

¹⁶ For similar standards, cf. Illinois Code Crim. Proc. §110-5 (1964); Cal. Penal Code §1275; 15 La. Rev. Stat. §86 (1950); Mich. Stat. Ann. §28.893 (1954); Ohio Rev. Code Ann. §2937.23 (1954).

¹⁷ *People ex rel. Lobell v. McDonnell*, 296 N. Y. 109, 111 (1947). See also—

Arizona: Gusick v. Boies, 72 Ariz. 233, 233 P.2d 446 (1951).

California: In re Newbern, 55 Cal. 2d 500, 360 P.2d 43; 11 Cal. Rptr. 547 (1961).

Colorado: Trujillo v. District Court of Weld County, 131 Colo. 428, 282 P.2d 703 (1955).

Illinois: People ex rel. Sammons v. Snow, 340 Ill. 464; 173 N.E. 8 (1930).

Missouri: Ex parte Chandler, 297 S.W.2d 616 (Mo. App. 1957).

Montana: State v. McLeod, 181 Mont. 478, 311 P.2d 400 (1957).

Nebraska: Application of Kennedy, 169 Neb. 586, 100 N.W.2d 550 (1960).

New Jersey: State v. Bentley, 46 N. J. Super. 193, 134 A.2d 445 (1957).

Such criteria, however, fail to take account of the fact that in most instances the bond for the defendant's appearance is furnished not by the defendant but by his commercial bondsman. This system has been challenged as undermining the whole purpose of bail:

It is frequently urged that eligibility for release and the amount of the bond are intimately related, because the higher the bail the less 'likelihood [there is] of appellant fleeing or going into hiding.' This argument presupposes that an appellant with higher bail has a more substantial stake and therefore a greater incentive not to flee. This may be true if no professional bondsman is involved. But if one is, it is he and not the court who determines appellant's real stake. Under present practice the bondsman ordinarily makes the decision whether or not to require collateral for the bond. If he does, then appellant's stake may be related to the amount of the bond. If he does not, then appellant has no real financial stake in complying with the conditions of the bond, regardless of the amount, since the fee paid for the bond is not refundable under any circumstances. Hence the court does not decide—or even know—whether a higher bond for a particular applicant means that he has a greater stake.¹⁸

A second troublesome attack on the present system has been raised on behalf of the indigent defendant who, from lack of funds, cannot raise bail himself or obtain it from a professional bondsman. While the inability of a defendant to raise bail was held in 1950 to give him "no recourse but to move for trial,"¹⁹ the continuing validity of requiring financial bail from an impoverished defendant has recently been challenged:

To continue to demand a substantial bond which the defendant is unable to secure raises considerable

Ohio: Ex Parte Cremati, 99 Ohio App. 402, 117 N.E.2d 440 (1954).
Oregon: Delany v. Shobe, 218 Ore. 626, 346 P.2d 126 (1959).

¹⁸ *Pannell v. United States*, 320 F.2d 698, 699 (D. C. Cir. 1963) (Wright, J. concurring).

¹⁹ *United States v. Rumrich*, 180 F.2d 575, 576 (2d Cir. 1950).

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problems for the equal administration of the law . . .
 Can an indigent be denied freedom, where a wealthy
 man would not, because he does not happen to have
 enough property to pledge for his freedom?²⁰

In sum, bail in America has developed for a single lawful
 purpose: to release the accused with assurance he will return
 at trial. It may not be used to detain, and its continuing
 validity when the accused is a pauper is now questionable.
 From the law, we turn to the bail system in practice.

Chapter II.

THE BAIL SYSTEM AND ITS CRITICS

Disenchantment with the operation of the bail system in
 the United States dates back many years. Public administra-
 tors and legal scholars began conducting intensive analyses
 of the bail situation in urban centers in the 1920's.¹ Today,
 four decades later, bail inquiries are still being made through-
 out the country. Though widely separated in time and place,
 the major findings of published studies reveal some striking
 parallels. Set forth below are capsules of the critical situa-
 tions found in Chicago, Philadelphia, New York, Washington
 and the federal system, over the period of the last 37 years.

A. Chicago

The Bail System in Chicago is the landmark study pub-
 lished by Arthur Lawton Beeley and the Chicago Community
 Trust in 1927.² Examining the records of the Municipal
 Court and Criminal Court of Cook County, Beeley found,
 despite the minor nature of most offenses and the 60% prob-
 ability that the accused would ultimately be discharged or
 acquitted, that nearly three-quarters of Chicago's criminal
 cases were being initiated by arrests. Police lockups, where
 arrested persons were jailed pending bail determinations,
 were described as places where "A person with any decency
 would feel that one night there had defiled him for life."
 Bail setting followed an arbitrary schedule geared to the

¹ See Pound, *Criminal Justice in Cleveland* (1924).

² The Report of the Wickersham Commission in 1931 described
 Beeley's work as "so much more thorough a study of the bail problem
 than is contained in any of the surveys [of the administration of
 criminal justice], that the liberty has been taken of using it as the
 basis for this summary on that subject. Its conclusions are un-
 doubtedly applicable to American communities generally; and its
 data consistent with and corroborative of the data contained in the
 surveys." National Commission on Law Observance & Enforcement,
Surveys Analysis 89 (1931).

²⁰ *United States v. Bandy*, 81 S.Ct. 197-8 (1960); see also 82
 S.Ct. 11 (1961). Both opinions in *Bandy* were written by Justice
 Douglas, acting as Circuit Justice.

alleged offense, e.g., \$400 for a city code violation, \$10,000 for robbery. Nearly 20% of all defendants were unable to post bail, and remained in jail. Professional bondsmen were said to play too important a role in the local administration of criminal justice. Release on personal recognizance was allowed in only 5% of the cases, all minor infractions.

An analysis of several hundred case histories of prisoners awaiting trial in Chicago showed that most were detained on bail of between \$5,000 and \$20,000, with a large number being discharged after a month or two in jail. Nearly 90% of the entire unsentenced population had lived in Chicago over a year, 70% had families there, and over one-half had references from reputable persons in the community; only 50% had any record of prior convictions. The study found that 28% of the sampled detainees were needlessly imprisoned before trial, while many others, just as obviously undependable, were granted conditional release and never returned for trial. "In too many instances," concluded Beeley, "the present system . . . neither guarantees security to society nor safeguards the rights of the accused." It is "lax with those with whom it should be stringent and stringent with those with whom it could safely be less severe." He recommended (1) greater use of the summons to avoid unnecessary arrests, (2) a constitutional amendment to permit denial of bail to hardened offenders charged with felonies and (3) the inauguration of fact-finding investigations so that bail determinations could be tailored to the individual.³

³ For a brief intervening bail study, see Weintraub, *Why in Kings County?* The Pleader 5-6 (March 1938). It reported a 1937 finding by the Judicial Council of the State of New York that while defendants in criminal cases in the New York City area had to remain in jail prior to trial in only 2½% of the cases in Queens, 14% in the Bronx and 16% in Manhattan, the rate in Kings County was 40%. The extraordinary detention figures in Kings County were attributed to unwarranted increases in bail by magistrates when defendants were arraigned after indictment.

Chapter III

THE ROLE OF THE BONDSMAN

A study conducted by the United Nations recently disclosed that the United States and the Philippines are the only countries to allot a significant role to professional bail bondsmen in their systems of criminal justice. Commercial bondsmen emerged in this country to meet the needs of accused persons whose right to bail would otherwise be thwarted by the lack of a personal surety, real estate or adequate cash. For the vast numbers of defendants unable to raise the bail amount themselves, the bondsman is on tap 24 hours a day to secure their freedom for a price. It is the bondsman to whom courts turn if the defendant fails to appear, and who is supposed to go to great lengths to apprehend an escapee to avoid forfeiture of his bond. As a bailor, he enjoys a private power to arrest his bailee.¹ He can even surrender him to the court before trial if he suspects that flight is imminent. The bondsman notifies the accused of the trial date and personally accompanies him to court. The profit motive is presumed to insure diligent attention to his custodial obligations. A New York judge described the bondsman's role as follows:

There is a general misconception . . . that solicitation of business by bondsmen is illegal. It is entirely lawful—just as lawful as solicitation by life insurance agents. And the solicitation under the law may take place in the courthouses, police stations and places of detention.

It is even necessary and desirable that this should be so—under proper regulation. Otherwise the casual offender, the inexperienced offender, the offender charged with minor crimes, would be confined in jail while the professional criminal with his outside contacts, experienced little difficulty in arranging bail. In this Court, even after the cases have been examined below, I have found many defendants ignorant of the fact that bail has been fixed by the

¹ *Taylor v. Taintor*, 83 U.S. 366, 371 (1872).

magistrate, ignorant of the amount of bail fixed and the method and cost of obtaining release on bail. And it is generally the minor or low bail offender, whose even temporary detention is not justified by the crime charged, who finds himself in that predicament. It is most desirable that this class of offender should be solicited and bailed.²

A. Bail Bond Costs

Since its inception, the institution of commercial bail has enjoyed a hybrid status, somewhere between a free enterprise and a public utility. Some states regulate the premiums bondsmen may charge; others allow whatever the traffic will bear. Some regulate only insurance surety company bonds; others control the fees charged by individual bondsmen as well.³

Premium rates differ markedly throughout the country. New York bondsmen charge 5% on the first \$1,000, 4% on the second \$1,000, and 3% on the balance.⁴ Philadelphia bondsmen charge 8% plus a service charge, but in the rest of Pennsylvania the rate is 10% on the first \$100, and 5% on the balance. Baltimore's rate is 7% up to \$2,000, and 6% thereafter; while in New Jersey it is 10% on the first \$2,500, then 6%. Des Moines' rate is 5%;⁵ Boston's is 10% across the board without collateral, 5% with. The District of Columbia allows 8% on the first \$1,000 and 5% on the rest. The standard premium rate in the United States seems to be 10%, known to prevail in Atlanta, Cincinnati, Detroit, Denver, St. Louis, Illinois, California, and most federal courts. Rates as high as 12% have been reported in Wisconsin⁶ and

² *People v. Smith*, 196 Misc. 304, 307, 91 N.Y.S.2d 470, 494 (1949) (Sobel, J.).

³ Regulation of bondsmen is discussed in part I, *infra*.

⁴ Except as indicated otherwise, data on premium rates in this section come from bail surveys conducted in the listed cities and interviews with bondsmen.

⁵ *Des Moines Register*, Pretrial Liberty Without Bond, October 31 and November 1, 1962.

⁶ *Milwaukee Journal*, March 13, 1964.

20% on some offenses in Birmingham. Within the legal maximums, however, bondsmen frequently bargain for special rates, particularly in high volume, low risk offenses like gambling.⁷ Disputes between bondsmen over price cutting are not uncommon.⁸ Neither are allegations of illegal overcharging.⁹

Premium rates do not tell the whole story on the cost of commercial bail. Service charges are added in many jurisdictions. Bondsmen in Baltimore charge a minimum fee of \$25 no matter how small the bond, and in California a standard \$10 fee is added to the premium.

In some states, bonds written at the time of arrest must guarantee the presence of the accused until the case is finally disposed of by the trial court.¹⁰ In every state, a new bond may be required on appeal. In some places, a defendant may be forced to pay premiums on four different bonds in the course of a criminal proceeding: from arrest to preliminary hearing, preliminary hearing to indictment, indictment to trial, and verdict to appeal. In such cases, the defendant may be amenable to a "deal" for a single bond at a higher premium rate to carry him through the case. The bondsman's legal right to cancel a bond (and keep the premium) any time he surrenders the defendant to court may sometimes be used as a lever to collect additional fees just to keep the original bond in force.¹¹

B. Bonds on Credit

Most bondsmen write bonds on credit, or allow premiums to be paid on an installment basis. Where the risk is low, and the defendant apparently has funds, bondsmen feel that it is

⁷ E.g., Baltimore, Washington, D. C. and New York.

⁸ *Rocky Mountain News*, Feb. 20, 1964; *Des Moines Register*, March 2, 1963.

⁹ E.g., *Milwaukee Journal*, July 1, 1963; Philadelphia; Cincinnati.

¹⁰ E.g., Ill. Code Crim. Proc. §110-10 (1964).

¹¹ *Des Moines Register*, Pretrial Liberty Without Bond, October 31 and November 1, 1962. Wisconsin is about to require bondsmen to refund premiums to defendants whose bail is reduced. *Milwaukee Journal*, Apr. 30, 1964.

more profitable to take the business, even if there is only a partial payment. In addition, bonds are sometimes written on credit to accommodate lawyers who are a vital source of business. One Chicago bondsman estimated that 75% of his bonds were issued on credit;¹² another in Greenville, South Carolina, gave a 90% figure. Boston bondsmen are occasionally requested by courts to take "charity" cases,¹³ and Worcester, Massachusetts bondsmen are reported to take non-paying clients in the hopes of future paying business. Credit practices are unsystematized, and vary from bondsman to bondsman. Reports from some cities indicate that some defendants who owe bondsmen money commit further crimes, especially burglaries, to pay bond premiums.¹⁴

C. The Surety Company

Most bondsmen are backed by surety companies. These companies are licensed under state insurance laws, which require them to maintain funds sufficient to satisfy all forfeitures. Either by statute, court rule or practice, it is common to find that only bonds backed by surety companies will be accepted by the courts. This insures that payment of forfeitures will not depend on the financial condition of the individual bondsman.

But surety companies for the most part have been extremely successful in avoiding losses. In addition to the 2% which each company receives out of every bond written by its agents, the company extracts an additional ½% or 1% of the bond premium to be placed in a "build-up fund." The fund is drawn upon whenever a forfeiture occurs, and the amount each agent has in his build-up fund determines the amount of bonds he may write. If a forfeiture exceeds the build-up fund, the company takes the balance out of future premiums. This system enables the surety company to do a large business with little risk. Examination of one New York

¹² *Chicago Tribune*, Aug. 19, 1963.

¹³ *New York Times*, July 15, 1961.

¹⁴ E.g., *Rock Island Illinois Argus*, July 18, 1963; *Philadelphia Sunday Bulletin*, Aug. 8, 1963; Denver, Colo. and Greenville, S. C. bail surveys.

company's books showed that from 1956 to 1958 it wrote bonds in the face amount of \$70,000,000, received \$1,400,000 in surety premiums, and suffered no losses.

Surety companies assign the management of their bail bond business to general agents, who take charge of different geographical areas. The general agent controls the amount of bonds written by bondsman agents in two ways. First, state statutes or court rules frequently require each bondsman to fill out a power of attorney from his surety company to show authorization for each bond he writes; the general agent may limit issuance of these powers. New ones are usually issued only as outstanding powers of attorney are disposed of through termination of the bail obligation, although it is not uncommon for a large number of powers to be outstanding simultaneously. Secondly, most companies limit the agent's discretion in writing large bonds, and require specific authorization before each one is issued. Depending upon the company and the agent, a large bond may be one which exceeds \$1,000; certainly most bonds over \$5,000 require approval from the general agent.

D. Collateral

To hedge against inadequate premiums and the ever present threat of forfeiture, many bondsmen require a defendant or his relatives to furnish collateral equal to all or part of the bond. Because collateral and indemnity agreements are usually not regulated by statute, the bondsman may "insist on the deed to the home of the accused or require a relative to put up his home or act as co-signer before posting bond."¹⁵ In cities like Baltimore, Chicago and Detroit, bondsmen attempt to secure full collateral, reportedly because of strict forfeiture enforcement policies.¹⁶ In Nassau County, New York; one bondsman reported that "the indemnifiers mean everything, the defendant nothing." Washington, D. C. bondsmen ordinarily do not require collateral, but decide on a case by case basis. The criterion used by one New York bondsman

¹⁵ *Des Moines Register*, October 31 and November 1, 1962.

¹⁶ Detroit reports no uncollected forfeitures since 1931. 1961 Annual Report, Detroit Recorders Court.

is: "If a person comes in and I don't know him or his lawyer, we look for collateral; if they don't have it, we don't bother with them."¹⁷

The amount of security which the bondsman is able to obtain from accused persons varies. 100% collateral is rarely obtainable, and is required only in cases the bondsman considers to be very bad risks, such as narcotics, or where the bond is unusually large. Some efforts to obtain collateral serve not to assure indemnification against monetary loss, but as a psychological deterrent to flight by the accused. A D. C. bondsman has even taken a lap dog as collateral. A story current among bondsmen in Florida is that one of their number used to carry a collateral box in which he collected items of sentimental value, such as wedding rings, or of practical value, such as false teeth. On one occasion he is supposed to have kept the child of the accused.

A report by the Criminal Court Committee of the Association of the Bar of the City of New York, entitled *Bail or Jail*, recently summed up the importance of collateral in the bail system as follows:

The ultimate decision as to detention is therefore left with the bondsman—not by virtue of the legally fixed premium, but through an unfettered decision as to the amount of collateral he will demand. It has even been intimated that hostile action by the Judges or others, particularly with respect to the vacating of forfeitures and stricter supervision of bondsmen, might result in their refusal to write bonds, a strike which under today's statutory scheme would have a genuinely chaotic effect upon the City prisons in very short order.¹⁸

Bondsmen "strikes" were in fact reported in Brooklyn and New York City in 1961 and 1964, taking the form of actual or threatened concerted refusals to write bonds except on 100% collateral in bankbooks or real estate.¹⁹

¹⁷ *New York Times*, December 22, 1961.

¹⁸ *The Record* 11, 13 (Jan. 1964) (hereafter cited as New York City Bar Report).

¹⁹ *New York Times*, December 22, 1961 and January 21, 1964.

Chapter IV

THE COSTS OF DETENTION

Those who cannot afford a bondsman generally go to jail. They lose their freedom not on any rational criteria for separating good risks from bad, but because they are unable to raise a cash premium as low as \$25 or \$50, or to furnish the required collateral. A resolution adopted by the National Association of Attorneys General on July 3, 1963 declared:¹

Many persons accused of crime are incarcerated for various periods of time because of their inability to post bail, although often not indicted for the crime or later found not guilty after trial, resulting in loss of liberty, separation from families and loss of employment as well as expense to the state in the cost of confinement (and) relief for dependents . . .

These costs of pretrial imprisonment in the United States, in terms of time, money, human suffering and justice are staggering.

A. *Days and Dollars*

In fiscal year 1960, 23,811 persons accused of federal offenses were held in custody pending trial. The average length of their detention was 25.3 days.² Detention ranged from a low average of 2 days in some districts to a high average of 110 days in others.³ In 1963 federal detainees spent an estimated 600,000 jail days in local prisons, at a cost to the

¹ Similar resolutions were adopted by the American Bar Association on August 15, 1963, The National Legal Aid and Defender Association on October 25, 1963 and the National District Attorneys' Association on March 5, 1964.

² Advisory Committee's Note to Rule 46, Second Preliminary Draft of Proposed Amendments to the Federal Rules of Criminal Procedure (1964).

³ Survey of United States Attorneys (1964); Attorney General's Committee Report p. 65.

federal government of \$2 million.⁴ In the same year, 30 to 40% of the inmates of the District of Columbia jail were detainees awaiting trial or sentence; 84% were eligible for release on bond but couldn't raise it. In 1962, they averaged 51 days in jail at a cost of \$200 per defendant for a total of almost \$500,000.⁵ In Philadelphia in 1954, the average was 33 days in jail for a total of 131,683 jail days. Today, ten years later, detainees account for 20% of Philadelphia's jail population and average 26 days at a cost of \$4.25 per day or \$1,300,000 a year.⁶ In Los Angeles pretrial detainees average 78 days before disposition of their cases. On a single day in December 1963, there were 1300 such prisoners in the Los Angeles County jail.⁷ On September 30, 1963, 1286 of 2057 Cook County jail inmates were awaiting trial.⁸ Denver jails $\frac{1}{3}$ to $\frac{1}{2}$ of accused persons, whose period of detention from arrest to trial may be eight months.⁹ 79% of St. Louis defendants, or 900 per year, cannot raise bail; each detainee averages a six weeks' stay and costs the taxpayer \$2.56 for each day in jail.¹⁰ Approximately 75% of the defendants in Baltimore are detained,¹¹ while ABA sample surveys of 1962 felony cases show 71% detained in Miami, 57% in San Francisco, 54% in Boston, 48% in Detroit and 44% in New Orleans. A recent Cleveland survey showed that 400 defendants were

⁴ Letter from John J. Galvin, Ass't Director of Bureau of Prisons to Mr. Herbert Sturz, November 6, 1963.

⁵ District of Columbia Bail Study, p. 29.

⁶ Philadelphia Bail Study, p. 1059: Defender Association of Philadelphia, Proposal for the Establishment of a Pre-trial Release Court Service Program in Philadelphia (1964).

⁷ Statement of Los Angeles County Supervisor Kenneth Hahn to CBS Correspondent Charles Kuralt. In Orange County, California, detention prisoners constitute 60% of the jail population, while in Oakland, 358 out of 587 prisoners, or 61%, were being detained for want of bail in March 1963.

⁸ *Chicago Daily News*, Oct. 28, 1963.

⁹ Denver Bail Survey.

¹⁰ Schultz, Bail for the "Have Nots": The Recognizance Program of the St. Louis Circuit Court for Criminal Causes (1963).

¹¹ Sylvia Porter—Bail System Needs Reform, *Washington Evening Star*, Nov. 11, 1963.

detained in the local jail awaiting trial, and stayed there for periods of between six weeks and six months.¹²

Smaller communities show considerably lower percentages of detained defendants but often longer periods of detention. For instance, 31% or 342 out of 1086 grand jury defendants in Passaic, New Jersey in 1961 were detained an average of 4 months in jail if indicted; 4 to 5 weeks in jail if no indictment was returned. In Essex County, New Jersey, 71% are detained for a 54 day average.¹³ In upstate New York, detainees may spend months awaiting action by grand juries, which meet only 3 or 4 times a year.¹⁴ In Pennsylvania, a defendant accused of driving without a license, and unable to raise a \$300 bond, recently spent 54 days in jail awaiting trial, even though the offense carried a maximum penalty of 5 days.¹⁵

The most complete figures on the costs of detention for want of bail come from New York City. In 1962, 58,458 persons spent an average of 30 days apiece in pretrial detention, or a total of 1,775,778 jail days, at a cost to the city of \$6.25 per day, or over \$10,000,000 per year.¹⁶ In 1961 detainees accounted for 45% of the 9,406 daily census of city prisoners. The Women's House of Detention, 40% of whose present inmates are held for want of bail, is so overcrowded that a new \$24,000,000 detention facility is being planned. Women are confined there an average of 13 days prior to trial; one out of four is ultimately acquitted. The 58,458 figure also includes 12,955 adolescents in the 16-21 age group who, in 1962, spent 396,025 days in pretrial detention. In the Brooklyn House of Detention, the average pretrial confinement of adolescent boys

¹² *Cleveland Plain Dealer*, March 26, 1964.

¹³ *Asbury Park Evening Press*, Mar. 9, 1964; Preliminary Report on Pretrial Detention Practices in New Jersey, p. 11 (Mar. 1964).

¹⁴ Correctional Association of New York, 117th Annual Report (1963).

¹⁵ *Philadelphia Inquirer*, Feb. 21, 1964.

¹⁶ Botein, Shifting the Center of Gravity of Probation (Oct. 22, 1963) (hereafter cited as Botein).

is 32 days; 70% are ultimately found not guilty or otherwise released.¹⁷

The direct per capita costs of pretrial detention run high. Recent surveys showed averages of \$2.56 per day in St. Louis, \$2.61 in Atlanta, \$3.82 in Washington, D. C., \$4.25 in Philadelphia, \$4.28 in Chicago, \$6.25 in New York and \$6.86 in Los Angeles. Because these figures include both fixed and variable costs, they do not furnish an accurate measure of the potential savings to each community from broader pretrial release. Operational items such as custodial salaries, building maintenance and utilities apply regardless of the number of prisoners detained, and would remain fixed unless a sizable decrease in inmate population would close down an entire unit of the holding facility. Variable costs, however, which relate to the personal maintenance of the prisoner, e.g., his food, clothing and medical care, would be reduced by the extensive use of pretrial release. These constitute about 20% of the total.¹⁸ The D. C. Bail Project recently estimated that substantial elimination of pretrial detention for bailable offenses would save the District of Columbia nearly \$100,000 a year.

But the costs of detention include far more than jail expenses. Eligible defendants who do not make bond are often unemployed or in low paying jobs at the time of arrest. If the accused is the wage earner of the household, his incarceration deprives his family of its means of subsistence. In most jurisdictions, dependents immediately become eligible for public assistance if they have no other income or resources. In at least one state, dependents do not become eligible unless their breadwinner has been actually sentenced. In either case, welfare departments require an investigation of new cases to determine eligibility. During this period, the defendant's family must either look to private welfare agencies or friends for support. The cessation of income may well mean a loss of household necessities through repossession and the accumulation of debts. If welfare aid is forthcoming, it runs from \$170 a month in Philadelphia to \$262 in Des

¹⁷ 1963 Report of the City Administration of New York on the House of Detention for Women, pp. 9, 11; New York City Bar Report, pp. 14-15.

¹⁸ D. C. Bail Study, p. 31.

Moines for a mother and four children. Children rendered homeless by parents' detention may, as in the case of D. C.'s Junior Village, add as much as \$8.00 a day to the community's costs.

The loss of personal income to the defendant also results in loss of spending power in the community and concomitant tax revenue. The defendant's employer loses his services and may also have to pay to train a replacement. Finally, loss of employment imposes on the bar or the community the expense of providing the accused with an adequate defense in his case. Estimates prepared in connection with the proposed Criminal Justice Act now pending before Congress indicate that this may run to several hundred dollars per case.

B. Human Costs

The wastage of millions of dollars yearly in building and maintaining jails for persons needlessly detained before trial loses significance when measured against the vast wastage of human resources represented by defendants and their families and the resulting costs to the community in social values as well as dollars.¹⁹

More important than the economic burden is the personal toll on the defendant. His home may be disrupted, his family humiliated, his relations with wife and children unalterably damaged. The man who goes to jail for failure to make bond is treated by almost every jurisdiction much like the convicted criminal serving a sentence. In the words of James V. Bennett, Director of the United States Bureau of Prisons:

When a poor man is arrested, he goes willy-nilly to the same institution, eats the same food, and suffers the same hardships as he who has been convicted. The well-to-do, the rich, and the influential, on the other hand, find it requires only money to stay out of jail, at least until the accused has had his day in court.²⁰

¹⁹ Botein, p. 17; Attorney General's Committee Report, pp. 68-71.

²⁰ Address, February 24, 1939.

Chapter VI

ALTERNATIVES TO THE BAIL SYSTEM

Bail, devised as a system to enable the release of accused persons pending trial, has to a large extent developed into a system to detain them. The basic defect in the system is its lack of facts. Unless the committing magistrate has information shedding light on the question of the accused's likelihood to return for trial, the amount of bail he sets bears only a chance relation to the sole lawful purpose for setting it at all. So it is that virtually every experiment and every proposal for improving the bail system in the United States has sought to tailor the bail decision to information bearing on that central question. For many, release on their personal promise to return will suffice. For others, the word of a personal surety, the supervision of a probation officer or the threat of loss of money or property may be necessary. For some, determined to flee, no control at all may prove adequate.

Recognizing the unfairness and waste entailed by needless detention, a number of authorities have already taken steps to restore to bail its historical mission. Attorney General Robert F. Kennedy, on March 11, 1963, issued instructions to all United States Attorneys "to take the initiative in recommending the release of defendants on their own recognizance when they are satisfied that there is no substantial risk of the defendants' failure to appear at the specified time and place." The Advisory Committee on Criminal Rules has recommended that Rule 46, governing "Bail" in federal courts, be replaced by a rule entitled "Release on Bail," specifying that among the facts to be considered in determining the terms of bail shall be "the policy against unnecessary detention of defendants pending trial." Programs to secure the same objective are now under way in state or federal courts in New York, Washington, Detroit, Des Moines, St. Louis, San Francisco, Los Angeles, Chicago, Tulsa and Nassau County, New York. Reported to be in the planning stage are projects in Seattle, Syracuse, Reading, Akron,

Cleveland, Atlanta, Boston, Milwaukee, Newark, Iowa City, Oakland, New Haven, Philadelphia and Syracuse, as well as the states of New Jersey and Massachusetts. The emphasis in all projects is on identifying the good risks; none undertakes to release defendants indiscriminately. The sorting of the good from the bad enables the system to pay closer attention to the handling of the accused whose release poses problems of flight or crime.

This chapter describes a variety of experiments and proposals to improve the bail system, or to substitute alternatives which will diminish its accent on money.

A. *Improved Fact-Finding Mechanisms*

To set bail on the basis of the criteria laid down in appellate decisions, statutes and rules, a judge or magistrate needs to have verified information about the defendant's family, employment, residence, finances, character and background.¹

¹ Perhaps the best judicial outline of factors relevant to bail setting was given on February 27, 1964, in the *per curiam* order of the United States Court of Appeals for the District of Columbia Circuit in *Fletcher v. United States*, denying without prejudice a motion for release on recognizance or reduction of bail pending appeal. As amended for broad use in appeal cases, the court has indicated that motions should furnish the following particulars:

1. Appellant's place of birth, length of time a resident of the District of Columbia area, previous places of residence within the last five years and for what periods, and where living at time of arrest.
2. Marital status:
 - (a) If married, for how long, wife's name, and whether living with her at time of arrest, and, if so, where;
 - (b) Children, if any, their ages.
3. Employment:
 - (a) by whom, at time of arrest, nature of work, and how long so employed;
 - (b) former places of employment within the past year, nature of work performed, and for what periods of time.
4. Names and addresses of relatives, if any (or other persons who may be helpful), in the District of Columbia area with whom appellant has kept close contact.

If the defendant is promptly arraigned the interval between arrest and the initial bail decision will be too short to permit elaborate investigation into these questions. But several jurisdictions have already found that a simple and speedy procedure can be devised to produce all the facts that are needed.

1. *Variations*

Limitations of space preclude an account of the many methods employed or proposed to gather pertinent facts about the background of each accused. Suffice it to say that, taken together, the fact-finders who are already at work or in the planning stage cover a wide range. As of May 1964 they included:

- (1) law students (Manhattan Bail Project, D. C. Bail Project, Des Moines Pre-trial Release Program);
 - (2) probation officers (St. Louis, United States District Court for the Northern District of California, Oakland, Nassau County, Baltimore, Boston, New York City);
-
5. Whether appellant has previously been admitted to bail in any criminal case; if so, in what court, for what offense, and the amount of bail; and if such bail was ever forfeited, the date.
 6. Whether appellant was ever on probation or parole; if so, in what court, and if either was ever revoked, the date of such revocation.
 7. (a) What is appellant's present state of health?
(b) Has appellant ever been hospitalized for a mental illness, and, if so, give details relating to hospitalization, the dates and places.
 8. What means of support the appellant had prior to his arrest in this case.
 9. (a) If admitted to bail, what plans, if any, does appellant have.
(b) If appellant expects employment, by whom he is to be employed.

- (3) prosecuting attorneys (United States District Court for the Eastern District of Michigan, Seattle);
- (4) defense counsel (Tulsa);
- (5) public defenders (Chicago, Philadelphia);
- (6) court staff investigators (Los Angeles); and
- (7) police (New York City Bar Association proposal).

Set out below, as a model, is a brief description of the Manhattan Bail Project, whose enterprising methodology created the current interest in bail fact-finding projects throughout the country.

2. *Manhattan Bail Project*

In the fall of 1961, the Vera Foundation's Manhattan Bail Project pioneered the fact-finding process in New York City by launching a program in the Felony Part of Magistrates Court (now Criminal Court). Assisted by a \$115,000 grant from Ford Foundation and staffed by New York University Law students under the supervision of a Vera Foundation director, the project interviews approximately 30 newly arrested felony defendants in the detention pens each morning prior to arraignment. The interviews are conducted in a cell set aside by the Department of Correction, and consume about 10 minutes. The accuseds for the most part are indigents who will be represented by assigned counsel. Although the project excluded a variety of serious offenses at the outset, only homicide and some narcotics and sex charges are now excluded.

In evaluating whether the defendant is a good parole risk, four key factors are considered: (1) residential stability; (2) employment history; (3) family contacts in New York City; and (4) prior criminal record. Each factor is weighted in points. If the defendant scores sufficient points, and can provide an address at which he can be reached, verification will be attempted. Investigation is confined to references cited in the defendant's signed statement of consent.

Verification is generally completed within an hour, obtained either by telephone or from family or friends in the courtroom; occasionally a student is dispatched into the field to track down a reference. The Vera Foundation staff then reviews the case and decides whether to recommend parole. The following factors are weighed:

EMPLOYMENT

Was defendant working at time of arrest?
 How long has he had this job, or any other job?
 Was he in a position of responsibility?
 How does his employer feel about his reliability?
 Will his job remain open if he is quickly released?

FAMILY

Does accused live with his family?
 Does he support wife, children, parents, or others?
 Are there any special circumstances in family such as pregnancy or severe illness?
 Does there appear to be a close relationship between accused and his family?

RESIDENCE

How long has defendant resided in the United States, if he is foreign born?
 How long has he lived in New York City or its environs?
 How long has he lived at his present address and prior residences?

REFERENCES

Will someone vouch for accused's reliability (e.g., his clergyman, employer, probation or parole officer, doctor)?
 Will someone agree to see that he gets to court at the proper time?

CURRENT CHARGE

What is the possible penalty if defendant is convicted?

Are there mitigating factors that are relevant to parole?

For example, if the charge is felonious assault, has the victim been only slightly injured? In husband-wife assault cases, will the wife permit her husband to return home?

PREVIOUS RECORD

Is the defendant a first offender?
 If not, when was he last convicted?
 Of what types of crimes has he been convicted?

OTHER FACTORS

Is defendant a recipient of unemployment insurance or other government checks that tie him to a particular locality?
 Is he under medical care which ties him to a hospital or doctor?
 Has he previously been released on parole or bail and, if so, has he appeared on time?

For each defendant determined by the project to be a good parole risk, a summary of the information is sent to the arraignment court, and copies of the recommendation and supporting data are given to the magistrate, the assistant district attorney and defense counsel. Counsel reads the recommendation into the record.

Since notification is so essential to a successful parole operation, Vera sends a letter to each parolee telling him when and where to appear in court. If he is illiterate, he is telephoned; if he cannot speak or understand English well, he will receive a telephone call or letter in his native tongue. Notification is also sent to any reference who has agreed to help the defendant get to court. The parolee is asked to visit the Vera office in the courthouse on the morning his appearance is due. If he fails to show in court, Vera personnel attempt to locate him; if his absence was for good cause, they seek to have parole reinstated.

B. Release on Recognizance

Once the facts about the accused's community roots are known, the court is in a position to individualize the bail

decision. Increasing attention has been given in recent years to opportunities for the widespread release of defendants on their own recognizance (r.o.r.), i.e., their promise to appear without any further security. A great many state and federal courts have long employed this device to allow pre-trial freedom for defendants whom the court or prosecutor personally know to be reliable or "prominent" citizens. But the past three years have seen the practice extended to many defendants who cannot raise bail. The Manhattan Bail Project and its progeny have demonstrated that a defendant with roots in the community is not likely to flee, irrespective of his lack of prominence or ability to pay a bondsman. To date, these projects have produced remarkable results, with vast numbers of releases, few defaulters and scarcely any commissions of crime by parolees in the interim between release and trial.

Such projects serve two purposes: (1) they free numerous defendants who would otherwise be jailed for the entire period between arraignment and trial, and (2) they provide comprehensive statistical data, never before obtainable, on such vital questions as what criteria are meaningful in deciding to release a defendant, how many defendants paroled on particular criteria will show up for trial, and how much better are a defendant's chances for acquittal or a suspended sentence if he is paroled.

1. New York

basis?
Why?

The results of the Vera Foundation's operation show that from October 16, 1961, through April 8, 1964, out of 13,000 total defendants, 3,000 fell into the excluded offense category, 10,000 were interviewed, 4,000 were recommended and 2,195 were paroled. Only 15 of these failed to show up in court, a default rate of less than 7/10 of 1%. Over the years, Vera's recommendation policy has become increasingly liberal. In the beginning, it urged release for only 28% of defendants interviewed; that figure has gradually increased to 65%. At the same time, the rate of judicial acceptance of recommendations has risen from 55% to 70%. Significantly, the District Attorney's office, which originally con-

curred in only about half of Vera's recommendations, today agrees with almost 80%. Since October 1963, an average of 65 defendants per week have been granted parole on Vera's recommendation.

In order to study the influence of its own recommendations, Vera initiated the project with the use of an experimental control procedure. Out of all defendants believed by the project to be qualified for release, half were in fact recommended to the court, while the other half were placed in a control group, and their recommendations withheld. In the project's first year, 59% of its parole recommendations were followed by the court, compared to only 16% paroled in the control group. In short, recommendations based on facts nearly quadrupled the rate of releases.

The subsequent case histories of defendants in both groups were thereafter analyzed. They showed that 60% of the recommended parolees had either been acquitted or had their cases dismissed, compared with only 23% of the control group. Moreover, of the 40% who were found guilty out of the parole group, only one out of six was sentenced to prison. In contrast, 96% of those convicted in the control group were sentenced to serve a jail term.

With Vera's assistance a demonstration release program was also carried on in New York City in the Women's House of Detention. Interviews were conducted with women detainees who had not posted bail. In approximately one-fourth of the cases, recommendations to reopen the bail decision and grant parole were made. The response of the court was favorable and the experiment resulted in decreasing the detention population of that overcrowded facility, in a six month period, from 327 to 164.

The interest and confidence generated by the Manhattan Bail Project led Mayor Wagner to announce in 1963 that New York City would take over and run bail fact-finding services on an extended scale through its Office of Probation. In January 1964, the New York City Board of Estimate allocated \$181,600 for the operation of these services in the five boroughs. And the 1963 Report of the New York Assembly Judiciary Committee advocated an extension of Vera-type operations into other counties of the state. The same

report also proposed a statute to require every arraigning judge, in court or through probation officers, to ascertain prior to bail-setting all data pertinent to the defendant's likelihood to return for trial. In order to encourage such inquiries the statute would provide that, absent waiver by the defendant, the failure of the judge to ascertain these facts would result in automatic parole.