

**A BAIL OF TWO CITIES:**  
**ATLANTA VS. PHILADELPHIA**  
**THE FIRST CRIMINAL COURT PHASE**

by

Brian Chad Starks

A dissertation submitted to the Faculty of the University of Delaware in  
partial fulfillment of the requirements for the degree of Doctor of Philosophy in  
Criminology

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“...this legislation, for the first time, requires that the decision to release a man prior to the trial be based on facts – like community and family ties and past record, and not on his bank account. In the words of the act, ‘A man regardless of his financial status – shall not needlessly be detained...when detention serves neither the ends of justice nor the public interest.’”

-President Lyndon B. Johnson’s remarks at the signing of the Bail Reform Act of 1966 June 22, 1966

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## **ABSTRACT**

This study examines bail operational procedures in Atlanta and Philadelphia. These two urban cities were chosen to provide a comparative analysis of bail systems based on geographical location (northeast and south). The comparison with an agency in the South is being done to examine the thesis in the criminal justice literature that the South has different criminal justice practices than most other locations. Specifically, race/ethnic disparities in arrest rates, trial outcomes and sentencing practices provide support for this thesis. Conducting an organizational analysis of the bail system will help structure the methodology for the project. The objective is to investigate the individuals' roles, the group process and the structure of the organization of bail in order to provide clarity on how the system(s) actually work. The social organization of both locales offers more insight to how the administration of bail produces disparate outcomes. This dissertation offered a more holistic view of operational bail procedures.

## INTRODUCTION

My dissertation research will focus on the first phase of the criminal court process, the bail system or what is sometimes called “First Appearance” or “Pretrial.” Although bail is frequently mentioned in criminal justice literature or the media, it has been largely understudied as a discrete feature or phase of the criminal justice system. This research will address three questions: (1) *How does the bail system operate and, in particular, how is the bail system socially organized?*; (2) *To what extent do extra-legal variables, such as age, race, gender, and social class, affect the bail system?*; and (3) *To what extent do the courtroom workgroup members’ recommendations affect the bail decision?*.

Bail presents both theoretical and substantive issues. Legal scholars have addressed these issues presenting theories regarding the nature and purpose of bail (Verrilli, 1982) and the political features that set bail policy (Verrilli, 1982), as well as offering critiques of the legal system (Foote, 1965; Goldkamp, 1985). Their theoretical positions derive from invoking different values: Should bail’s primary purpose be to protect the community of the rights of the accused? Should the bail system generate financial profits? Should bail function as a form of punishment? Whatever one’s theoretical assumptions, understanding bail also requires examining substantive issues: How does the bail system work in practice? Are minorities treated differently in the bail process? To address these distinct issues, my research question asks, “*How does the bail system operate and, in particular, how is the bail system socially organized?*”

Bail is determined during the pretrial processing of the accused. After a person is arrested for a crime, he or she is booked and brought before a magistrate judge or other judicial official

(sometimes a sheriff) for bail to be set. Booking is the process in which a record is created of an arrest. This includes obtaining the defendant's demographic information, fingerprints, and photograph. The individual then has the right to an appearance in bond court. When a judicial official sets bail, he is creating an agreement between the court and the accused; this agreement is also known as a bail bond. This bond's major purpose is to ensure that the accused will show up for court appearances, such as roll call and trial. Roll call is when the accused must report to the court to inform them of address changes, job changes and whether they have secured private or public counsel; it is a sort of check-in. The bail bond serves as a monetary and/or property contractual agreement in that if the accused fails to come to court, the dollar amount of the bond must be paid in full to the court (or the property must be forfeited) and a warrant is issued for the accused's arrest.

The decision to release the defendant back into the community remains the sole responsibility of the magistrate. Yet, other members of the court have the authority to make recommendations regarding the bond (e.g. prosecutors, defense attorneys). These individuals constitute what Siegel, Schmalleger, and Worrall (2011) refer to as the *courtroom workgroup*. Courtroom workgroup members consist of "professional courtroom actors, including magistrates, prosecuting attorneys, private defense attorneys, public defenders and others (e.g. employees of pretrial intervention) who earn a living serving the court" (Siegel et al., 2011, p. 53). Magistrates make the decisions in the bail process, determining if the accused are eligible for bail, the amount of bail, and if any conditions of bail should apply. Prosecuting attorneys, also known as (assistant) district attorneys, are representatives of the state that hold the responsibility of officially charging the accused with the criminal laws they are accused of violating. Prosecutors make recommendations on bail to the magistrate that include whether to

grant bail, the amount of the bail, as well as conditions of bail; they often seek the maximum amount in the bail process. Private defense attorneys are entrepreneurs in the legal field whose services are retained to represent the accused. They decide whom they represent at bail hearings based on who can pay the fees they require for them to appear in court. The defense attorney's job is to protect the civil liberties of the accused and make recommendations to the magistrate judge on bail decisions; usually, they recommend setting bail at the minimum amount needed to secure the release of the accused. Public defenders are funded by the state, oftentimes through non-profit organizations, and represent indigent defendants during the criminal court process. Their legal responsibilities are the same as private defense counsel, which is to protect the civil liberties of the accused and fight for the lowest amount of bail needed to secure release. The last member of the courtroom workgroup is the pretrial officials, often referred to as "pretrial." Pretrial services serves a dual purpose: processing intake of the accused and supervising accused who are granted conditional releases on bail. Pretrial services are responsible for conducting interviews of the accused prior to their court appearance. They provide demographic information on the accused that the magistrate judge often uses to make decisions on bail. They also make recommendations on bail based only on whether or not the accused qualifies for their program. Pretrial officials play a major role in the lives of the accused once bail is set. Based on the magistrate's decision, the accused could end up with certain conditions of bail that may include pretrial officials monitoring them prior to their court date. Historically, pretrial decision making has not yet received the attention given to the other stages of the criminal justice system (e.g. trial, sentencing practices).

The criteria a magistrate judge uses to set bail should include: (1) the likelihood that the defendant will return for court appearances; and (2) the risk that the defendant poses to the

community (Demuth, 2003; Goldkamp & Gottfredson, 1985). Depending on the jurisdiction, the number of specific criteria (legal variables) used to determine the bail amount could range from two to forty. Legal variables, such as the criminal history of the accused, the seriousness of the offense at time of arrest, the dangerousness to the community of the accused, and the flight risk appear to be the most widely publicized criteria used to determine the type and amount of bail needed to ensure the accused's return to court. Variables such as age, race, class and gender (sometimes termed extra-legal variables) are not supposed to influence the judge's pretrial decision; however, there is no body of restrictive guidelines that a magistrate judge must abide by when making these decisions. Research shows that race and ethnicity both contribute to pretrial decisions in ways that are more discriminatory towards minorities than their white counterparts (Demuth, 2003; Katz & Spohn, 1995; Nagel, 1983; Schlesinger, 2005). But how and why does this happen? To address these questions I formulate another research question for this project, *"To what extent do extra-legal variables, such as age, race, gender and social class, affect the bail system?"*

### **Understanding Inequities in Bail**

Although previous research has identified racial differences in decision making outcomes of the bail system, few studies have specifically examined how extra-legal variables affect the recommendations of the courtroom workgroup and how these recommendations may or may not impact the magistrate judge's decision on bail. Studies by Lizotte (1978), Feeley (1979), Nagel (1983), Patterson and Lynch (1991) and Peete (1994) found racial and ethnic disparities in bail settings. Bynum's (1982) work explored 360 bail decisions in five cities and concluded that 13 percent fewer minorities (Blacks and Native Americans) were released (prior to trial) than their white counterparts. Albonetti (1989) studied ten federal courts' bail proceedings over a three

year period (1974-1977) involving a representative sample of 5,660 cases and found that Black males with prior felony records were denied bail more often than white males with similar records. Chiricos and Bales's (1991) bail study in the Southern region of the United States, with a sample of 1,970, found comparable racial disparities. Similarly Ayres and Waldfogel's (1994) study in the Northern part of the United States, with a sample of 1,366 cases, demonstrated that Black males received higher bail than white males.

Disproportionate representation of minorities in the criminal justice system is evidenced in arrest rates, conviction rates, and harsher sentencing practices. According to the Bureau of Justice Statistics (2001), approximately 32% of Black men will be in a state or federal correctional facility in their lifetime, compared to 17% of Hispanics and 6% of white men (estimated on rates of first incarceration) (United States Department of Justice). The statistics for jail inmates display the same racial trends. In 2002, 60% of inmates in local jails were of ethnic/minority descent: approximately 40% were Black, 19% Hispanic, 1% American Indian, 1% Asian and 3% were of more than one race/ethnicity (United States Department of Justice, 2001).

The conflict model of criminal justice can help explain these racial differences. Generally the conflict perspective argues that individuals of a lower socioeconomic status experience worse outcomes at every phase of the criminal justice system than their middle and upper class counterparts. Specifically, Chambliss (1969) concludes, "The lower class person is (1) more likely to be scrutinized and therefore to be observed in any violation of the law, (2) more likely to be arrested if discovered under suspicious circumstances, (3) more likely to spend time between arrest and trial in jail, (4) more likely to come to trial, (5) more likely to be found guilty, and (6) if found guilty more likely to receive harsh punishment" (p. 86). Several scholars have

tested the conflict model in the sentencing phase of the criminal court system and concluded that discriminatory practices were perpetuated by the judiciary (Chambliss, 1969; Chiricos and Waldo, 1975; Lizotte, 1978; Quinney, 1970). Lizotte (1978) in particular, concluded that Chicago trial courts supported extreme inequality in sentencing practices against the poor and minorities, handing down sentences for them that were much harsher than those for higher income whites. Thus, racial differences in bail outcomes are paralleled at other stages in the criminal justice system.

Some scholars have pointed to attribution theory to explain these racial differences in the criminal justice system, specifically with sentencing outcomes (Albonetti, 1991). Attribution theory proposes that incomplete information about the accused may lead the magistrate to try to reduce uncertainty by not only considering the legal variables of the case but the extra-legal characteristics of the accused (Albonetti, 1991). Thus, age, race, gender, social class or other social positions become an unofficial part of the equation when making decisions on bail (Albonetti, 1991; Bridges & Steen, 1998; Davis, 1995; Farrell & Swigert, 1978; Knapp, 1993; Schlesinger, 2005; Spohn & Holleran, 2000; Steffensmeier, 1980; Steffensmeier, Kramer & Streifel, 1993; Ulmer, 1997). These attributions (characteristics or qualities of the individual) may be behavioral projections (how one will behave in the future) based on race and ethnic stereotypes that often work against the accused. Attribution theory suggests, “Negative racial and ethnic attributions are more likely to be made when legal factors relevant to the case increase their salience” (Schlesinger, 2005, p. 172). For example, based on the charge the accused faces, certain attributes attached to these charges may influence the bail decision. More specifically, racial attributions of Blacks being dangerous and involved in selling drugs may become more salient when a Black male accused of a drug offense appears before a magistrate in pretrial;



holding these ideas may increase the probability of the magistrate denying bail or setting a very high bail. Furthermore, racial attributions of whites being more professional and less involved in street crime may become more salient when a white male accused of a white collar crime appears before a magistrate during pretrial. This is in line with stereotypes that whites commit more non-violent white collar crime compared to the social stigma that Blacks commit more street crimes, which increases the probability of a judge granting bail. Bernie Madoff's<sup>1</sup> case presents an example of this. Madoff could have been considered a serious flight risk due to his extensive financial and social resources and had bail denied, but was instead granted bail, presumably because of his status as an upper class white male and his appearance as not dangerous to the community.

This research thoroughly investigates the extent to which these practices are still in existence, to determine whether minorities and the poor are treated differently in the first phase of the criminal court system.

### **Dissertation Outline**

This study presents an organizational analysis of the bail system moving beyond the limited scope of courtroom observations, which examines the major players in the bail operations and their roles in shaping bail decisions. The objective of this study is to investigate the roles within the courtroom workgroup, the interactions among the individuals, and the structure of the organization of bail in order to clarify how the system actually works, and whether it works against/ for minorities. In addition, the processes prior to and during the bail hearing will be

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<sup>1</sup> Bernie Madoff was accused of one of the largest Ponzi schemes in history, which squandered more than \$50 billion of his investors' funds. Madoff was originally granted a personal recognizance bond for which the federal magistrate required 4 signatures to secure his bond (Esposito & Ross, 2008). However, when Madoff was unable to meet those conditions, the conditions of the bond were modified and rather than being held in jail, he was released on electronic monitoring and allowed to go home to his \$7 million mansion (McCool & Poirier, 2008).

examined to understand whether the courtroom serves as a front stage for the organizational structure in which most of the decision making takes place back stage.

While other studies have observed bail proceedings, they have given very limited attention to the ways courtroom workgroup members shape the process by making recommendations that may or may not impact the magistrate judge's decisions. To understand decision making and discriminatory practices, we must include the roles of courtroom workgroup members other than the magistrate. To address these issues, another research question is needed, *"To what extent do the courtroom workgroup members' recommendations affect the bail decision?"*

### **Why Atlanta and Philadelphia?**

The bail courts in Atlanta, GA and Philadelphia, PA will be examined in this study to provide a comparative analysis of bail systems in two large urban cities in different geographical regions (i.e. the South and Northeast). Atlanta and Philadelphia were chosen as research sites for various reasons. One goal of this study's examination of the first phase of the criminal court system is to determine whether minorities, in particular Blacks, experience different bail outcomes compared to their white counterparts. For this reason, urban areas with a large Black population where high numbers of Blacks are involved in the criminal justice system were selected. In Atlanta, a large urban city in the South, Blacks account for 58% of the city's overall population; in Philadelphia, a large urban city in the Northeast, the Black population is 42% of the city's overall population (United States Census Bureau, 2010). Blacks are the head of the household in approximately 51% of Atlanta homes and 40% of Philadelphia homes; these figures

both greatly exceed the national average of 11% of Black heads of households (United States Census Bureau, 2010).

The similarities and differences for both cities extend past that of race and apply to social class. Atlanta and Philadelphia share similar educational, employment and income statistics when compared to the national average, yet they differ when compared to each other (United States Census Bureau, 2010). For example, nationally 15% of people have less than a high school education; however, while the percentages in Atlanta (17%) and Philadelphia (23%) both exceed the national average, Philadelphia's population is 6 percentage points higher than Atlanta's. On the other hand, Atlanta exceeds the national average for college-educated people with approximately 24%, while Philadelphia is below the national average for college-educated at around 12 percent (United States Census Bureau, 2010).

The national average for unemployed females is 8 percent and both Atlanta and Philadelphia exceed this average of unemployed females at approximately 15 percent (United States Census Bureau, 2010). The national average for unemployed males is 10 percent; again, both Atlanta and Philadelphia are much higher than the national average with 18% and 19% respectively (United States Census Bureau, 2010). Education and employment statistics have a strong correlation to household income. Not surprisingly, both cities have proportions of low-income families that exceed the national average. Nationally, approximately 14% of families have incomes under \$25,000; whereas the figures are approximately 23% for Atlanta and 23% for Philadelphia (United States Census Bureau, 2010). Examining socioeconomic statuses in these two locations is significant in this research because like race, social class has been demonstrated to be an important extra-legal variable in the criminal court system.

Although bail research has been conducted in both cities, Atlanta has not been studied as often as Philadelphia. The one major bail study in Atlanta was conducted by Paul Wice (1974). Philadelphia has been the site of at least two major bail studies by Caleb Foote (1954) and John Goldkamp (1977). In 1985, Goldkamp conducted another study, revisiting the administration of policy guidelines in a bail study in Philadelphia.

One of the final reasons I chose to conduct research in Atlanta and Philadelphia concerns their courtroom workgroups. Atlanta and Philadelphia's prosecution offices are both headed by Black males for the first time in history. Alexander (2010) highlights the importance of the prosecutor's role saying, "Though it is not widely known, the prosecutor is the most powerful law enforcement official in the criminal justice system. One might think that judges are the most powerful, or even the police, but in reality the prosecutor holds the cards" (p. 85-6). According to Kamala Harris, San Francisco's Black female chief prosecutor, "One of the fundamental requirements in building a fair and just criminal justice system is ensuring that, from top to bottom, that system is representative of the communities it is mandated to protect" (Valbrun, 2010). Recently legal scholars have become more concerned with criminal justice policies that affect communities of color. One way to address these issues is to put more people of color in positions of authority, such as the new growing trend of Black district attorneys. The notion behind this idea is that Black district attorneys who work in large urban areas populated with a high concentration of Blacks would be more committed to communities of color and more apt to address racial disparities in the criminal justice system.

This study examines bail data from two large urban cities, one that has historically been studied more than the other; both have large Black populations that are less educated, higher

rates of unemployment and lower incomes than the national average; and both have their first Black males serving as their chief law enforcement officers.

### **Statement of the Problem**

Bail has been legally understood as the means “to effect the release of an accused person from custody, in return for a promise that he or she will appear at a place and time specified and submit to the jurisdiction and judgment of the court, guaranteed by a pledge to pay the court a specified sum of money or property if that person does not appear” (Siegel et al., 2011, p. 300). Bail is merely the dollar amount placed on the accused to many in the public, yet that is only one component of a much more complex question. As mentioned earlier, bail operations entail several more critical issues regarding the organizational structure of the system. First the actual laws regarding bail must be evaluated. Furthermore, identifying the roles of the major players involved in setting bail is critical. In addition, determining how the bail decision making process unfolds and how decisions are made regarding who should get bail, specifically addressing the relationship between the amount of bail and the criminal offense and how flight risk is assessed, provides a more thorough understanding of the structure. There are also financial questions regarding what entities and individuals profit from the bail system, as well as how the availability of monetary resources determines if the accused will be released or detained. Overall, the equality and justness of the system must be assessed. To only understand bail as a dollar amount that the accused must pay for his or her release based on criminal charges limits the scopes of bail and undermines its importance to the criminal court system.

Chapter 1 provides a discussion of the historical origin of bail. My second chapter will outline the problem of bail, including the perspectives of legal scholars, criminal justice scholars

and bail reformers relative to bail operational procedures. Chapter 3 consists of quantitative analyses of two data sets. These data sets examine both legal and extra-legal variables used to determine bail decisions. I use the first data set, *State court processing statistics, 1990-2004: felony defendants in large urban counties*, for Atlanta and Philadelphia to establish a quantitative base line that I use to compare to the qualitative data that I collected for my dissertation. The second data set was created from ethnographic observations in Atlanta and Philadelphia and used to provide a quantitative complement to the interviews, as well as a comparison to the older data provided by the first data set. Chapter 4 describes qualitative methods used for interviews and courtroom observations. In Chapter 5, I discuss bail operational procedures that occur both inside and outside the courtroom in the city of Atlanta. Chapter 6 focuses on the city of Philadelphia's bail operational procedures in and out of the courtroom. The seventh chapter will specifically address the research questions and provide a comparative analysis between the two cities. This chapter also includes limitations of my work and suggestions for my future research agenda on bail.

## **Chapter 1**

### **HISTORICAL ORIGIN OF BAIL**

Bail laws in the United States have grown out of a long history of English statutes and policies. During the colonial period, Americans relied on the English bail structure that developed hundreds of years earlier. When the colonists declared independence in 1776, they no longer relied on English law, yet they formulated their own policies that closely resembled English tradition. In particular, bail policy in the United States is based on this old English system (Duker, 1977). In order to understand bail law, we need to begin with a brief introduction to the English common law.

### **History of Common Law**

Based on similarities in common origins, law, and legal institutions, legal scholars have categorized these legal systems into two distinct “legal families.” Common law and civil law are the most influential “legal families” of legal systems in the world; both were derived from Europe. Through colonialism and modernization in non-European countries, common law and civil law have spread throughout the world (Tarr, 2006). The United States is a member of the common law legal system as are other former British colonies such as Australia, Nigeria and India. The civil law family includes most of the Latin American countries and former French and Belgian colonies in Africa and Asia. These nations have all developed their own legislation and bodies of law; yet they all resemble other members of the same legal family in the organizational structure of their courts, in the procedural rules of evidence and in the developed legal doctrine (Tarr, 2006).

## *The Development of Common Law*

William the Conqueror laid the foundation for English common law. After the Norman conquest of England in 1066, the King's successors created permanent courts where judges were appointed by the king to administer the law (Plucknett, 1956; Tarr, 2006). The King also appointed "travelling justices" to rule in the name of the sovereignty over the county courts (Plucknett, 1956). These travelling justices were employees of the King, so they were expected to make decisions that were reflective of the King's political views. By the thirteenth century, judges had established a set of common legal procedures and legal standards throughout England. Even though procedures and standards had been created, judges were still challenged with the task of deciding which legal procedures and principles to use. Parliament had yet to be created and royal edicts were not applicable to the cases brought before the court (Plucknett, 1956; Tarr, 2006). In response to these issues, judges looked to "unwritten law," the common law for direction. As Sir William Blackstone speaks in his treatise on common law, "the doctrine of the common law, unlike legislative law are not set down in any written statute or ordinance, but depend merely upon immemorial usage" (Tarr, 2006, p. 6). Common law derived from "traditional customs and practices" and judicial decisions, which spoke to the authoritative legal principles, presumably drawn on the customs and practices of society. Judges became trustees of the law and their decisions served as the authoritative voice of proof and legitimation that such a custom exists as part of a common law. This is often known as "judge-made" law to legal scholars (Blackstone, 1979; Tarr, 2006).

As the magistrate judges' and "travelling justices'" decisions begin to accumulate, a cohort of judicial decisions began to develop, which magistrates used to help them decide the outcome of cases. This created a legal system of precedent, which judges could rely on when



deciding the outcomes of cases (Tarr, 2006). The use of precedence applied not only to the previous cases of the presiding judge, but to cases of his colleagues and predecessors.

### *Common Law and the United States*

The English legal system and common law were introduced to the United States, during the seventeenth century by English colonists that migrated to North America. Even after the United States declared its independence from England, the common law legal system remained the chosen style of law (Tarr, 2006). Just as the “travelling justices” had created “judge-made law” in England, the United States judiciary did the same, due to the lack of legislation (Tarr, 2006). This is important in understanding the power that judges were granted in making laws in the United States.

The United States did not accept all facets of England’s common law system, yet they did adopt most of their principles. The country did away with parts of the aristocratic style of English society, positioning itself as a democracy (Tarr, 2006). Also, even though the notion of deciding cases based on precedent is an integral part of the judicial system for the United States, it was not as binding as in English law. The United States judiciary has shown the propensity to step outside the lines of precedent and overrule earlier decisions that have been evidenced with changing circumstances (Nelson, 1975; Tarr, 2006).

## **Link between Common Law and Bail**

Bail laws in the United States were adopted from English statutes and policies, just as many parts of the United States' criminal justice system. During the colonial period, Americans emulated the bail structure that originated in England during the 11<sup>th</sup> century. After declaring independence in 1776, the United States created legal policies that were very similar to those of the English (Duker, 1977). Specifically, the policies that govern the bail industry in the United States were modeled after the English bail system. Knowledge of the English system and how it evolved until the time of the American independence is necessary to fully grasp the meaning of the American constitutional bail provisions and how they were intended to supplement a larger statutory bail structure (Duker, 1977; Wiseman, 2009).

Due to the Conquest of Norman, Kings and Sheriffs become very powerful entities in the criminal justice court system. Prior to the 13<sup>th</sup> century, English law gave the local Sheriff complete sovereignty over the accused. The Sheriff, who worked for the King, was allowed to decide who was granted or denied bail, as well as the amount of money needed to secure release from jail (Duker, 1977). The criminal code at this time allowed for all crimes to be subject to bail, even murder in the first degree (Duker, 1977). This aristocratic authority often resulted in discriminatory practices in the decision making process determining who was granted or denied bail. Often times, Sheriffs would exploit the bail system for their own financial gain. The Sheriff (on the King's orders) would often detain the accused without actually charging the individual with any criminal violations. A majority of these detainees were enemies of the King (Wiseman, 2009). After the Assize of Clarendon in 1166, the Crown (governing body of law) focused more attention on the role law enforcement played in the court system. They found the detaining of the accused without just cause to be "not in good faith" legal practices. Therefore a *writ of de*

*homine replegiando* was established with hopes of preventing the Sheriff from detaining the accused without proper notice of law violations (Duker, 1977). This document later became known as the first “writ of liberty” which provided the legal system with the first list of “bailable offenses” (Duker, 1977). The writ also included offenses that were not bailable, such as “those arrested by our special command or that of our chief justice, or for the death of a man, or for an offense in our forest, or for any other retto (wrong) for which according to English custom he is not replevisable” (Duker, 1977, p. 45). Even though the writ was established, the Sheriff still maintained a very high level of discretionary power that he used to ensure financial gain. He would often overcharge the accused for release on bail, and would sometimes charge bailiffs money for picking up and transporting the accused. In response, the Crown increased its legislative mandate and created the Statute of Westminster Act (1275) to put a stop to the Sheriff’s exploitation of the accused (Duker, 1977). Due to these reforms, Sheriffs would eventually lose their abilities to set bail and the power was subsequently handed over to judges and magistrates. However, the discretionary abuse of power did not end with the Sheriffs losing control of bail procedures.

An analogous use of bail to extort funds occurred in the 17<sup>th</sup> century when King Charles I forced his own noblemen to supply him with loans and incarcerated them in what was referred to as debtors’ prison. The accused were not notified of charges against them and were denied the opportunity for bail for no apparent reason. In fact, there were no criminal charges to be filed against the noblemen because they had not committed any criminal acts. In the early seventeenth century, some of these noblemen filed a petition against the King claiming that they were being detained on an “unsubstantiated and unstated accusation.” The court upheld the petition and released the noblemen (Professional Bail Agents of the United States, 2005).

In response to the King's ability to incarcerate people without just cause, Parliament introduced legislation to limit the King's abuse of power (Wiseman, 2009). This form of legislation became known as the Petition of Rights Act of 1628. The petition stated, "no freeman, in any manner as before mentioned, be imprisoned or detained" (Wiseman, 2009). The petition offered only limited protections from the abuse of power by the King and his court due to his Star Chamber. The Star Chamber was a court that was created to ensure the fair and equitable enforcement of laws against prominent people, those so powerful that ordinary courts could never convict them of their crimes (Wiseman, 2009). In 1641, Parliament did away with the Star Chamber court and added an addendum to the act: if an arrest was made by the King's Court or the Court of Common Pleas, a writ of habeas corpus must be provided; the jailer then had three days to deliver, grant a bail hearing or remand said arrestee (Wiseman, 2009). This act was also not strong enough to limit the abuse of power by the King. Thus the Petition of Rights Act of 1628 and the Act of 1641 were abolished by Parliament because these laws had failed to keep the King from incarcerating people (many of whom were his enemies) without just cause. Subsequently, Parliament passed the Habeas Corpus Act of 1679 (Wiseman, 2009).

The judicial officials (who were part of the King's Court) were very savvy in honoring and respecting the Habeas Corpus Act while simultaneously exerting their authoritative power. Even though they provided "just cause" for the arrests, judges set bail at such high amounts that the accused could not afford to pay the bond to secure his or her freedom. In a sense, the Habeas Corpus Act was useless in protecting the liberties of the accused (in regards to the arrestees the King did not want to be released back into the community). In an attempt to address these issues, Parliament responded with legislation in the English Bill of Rights of 1689 that introduced the "excessive bail" clause. Parliament (signed by William and Mary) stated, "That excessive Bail

ought not to be required, nor excessive Fines imposed; nor cruel and unusual Punishments inflicted” (Wiseman, 2009). The excessive bail clause was in a sense an attack against judicial sovereignty. The judges had been in effect co-conspirators with the King in abusing power by denying the opportunity for affordable bail to those (most were royal prisoners) who had annoyed the King. This is the origin of the “excessive bail clause” which made its way to North America to become an integral part of the federal government’s United States Constitution and state bail laws (Wiseman, 2009).

The excessive bail clause in the English Bill of Rights had an impact on the United States Bill of Rights in the 18<sup>th</sup> century. In June of 1776, the Virginia Declaration of Rights adopted the exact wording of the excessive bail clause from the English Bill of Rights, while other states’ wording of the clause was merely similar. In making changes to the Constitution in 1789, James Madison suggested that “ought” be changed to “shall” in the excessive bail clause to express discontent with excessive bail (Wiseman, 2009). His words fell on deaf ears and only one member of Congress brought to the floor the issues surrounding the excessive bail clause. Mr. Livermore, a member of the House of Representatives, noted the ambiguity of the clause and questioned the definition of the term as well as who would determine what qualified as “excessive” (Wiseman, 2009). This was to no avail; the English Bill of Rights excessive bail clause was now part of the United States Bill of Rights.

The United States continued to borrow from English statutes and policy. Prior to the passage of the English Bill of Rights in 1689, Pennsylvania’s Frame of Government of 1682 stated in section XI of the Laws Agreed upon in England “that all prisoners shall beailable by sufficient sureties, unless by capital offenses, where the proof is evident, or presumption great (Wiseman, 2009, p. 9). New York Chamber of Liberties and Privileges followed them a year

later with the language “that in all cases whatsoever Baile by sufficient Sureties’ Shall be allowed and taken unless for treason or felony plainly and specially Expressed and menconed in the warrant of Commitment. All fines may be moderate; and no cruel or unusual punishments shall be inflicted” (Wiseman, 2009, p. 9). Note here that this is a combination of Pennsylvania’s law and the English Bill of Rights. There are questions on why this mixed legal approach occurred but nothing has ever been known definitively. Caleb Foote (1954), in his piece, “The Excessive Bail Clause,” expounded on the assumption that the legal writer of the bill possibly assumed that making bail available to everyone would ensure that it would be reasonable; however, this is mere speculation. Nevertheless, the United States Bill of Rights excessive bail clause is rooted in the language of that of the English Bill of Rights. Yet, we do not see the same consistencies in the Federal Judiciary Act of 1789.

The Judiciary Act of 1789 was also before the House of constitutional amendments at the same time as the Bill of Rights, yet it did not take the language of the English law. Instead, it is more rooted in Westminster/Pennsylvania Frame of Government line of Anglo-American bail (Wiseman, 2009). It is much clearer and more definitive, stating:

And upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be by death, in which cases it shall not be admitted but by the supreme or a circuit court, or by a justice of the supreme court, or a judge of a district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offense, and of the evidence, and the usages of law. (Wiseman, 2009, p. 130)

This act specifies which crimes would be eligible for bail and set limitations on the discretionary bail setting process of the judiciary. Let’s put this in context. The Bill of Rights was passed by Congress on September 21, 1789 while the Federal Judiciary Act was passed eight days later on September 29, 1789. Congress passed the Eighth Amendment to prevent judges from setting bail in excessive amounts to prevent the accused from being able to pay it to secure

their freedom in cases that were allowed bail in line with the English tradition of abuse of power. Congress then passed the Federal Judiciary Act defining and outlining which cases were actually eligible for bail. The two go hand in hand and must be read in conjunction with each other. We now have a system of bail that speaks out against “excessive” bail (Eighth Amendment) and prohibits the accused from being detained without just cause (Habeas Corpus), as well as provides a clear distinction of cases which areailable (any crimes that are not capital offenses) (Federal Judiciary Act of 1789).

### **Bail Policy in the United States**

After the Bill of Rights of 1789 and the Federal Judiciary Act of 1789 were passed by Congress, bail policy remained untouched for almost two centuries (1789-1966). No major criminal justice court legislation was introduced; however, several studies impacted perspectives on bail during this time. In the early twentieth century, legal scholars Roscoe Pound and Felix Frankfurter discovered that bail bondsmen were exploiting the poor during a study of the criminal processes in several large cities (Feeley, 1983). Pound and Frankfurter’s findings were followed by Beeley (1927) who conducted the first major study focusing specifically on the administration of bail and found that the accused were often being held without bail before any formal charges were filed (Beeley, 1927). Beeley (1927) and others were cited in the 1931 Wickersham Commission Report which caused the Attorney General to call for national reform around the administration of criminal justice (Feeley, 1983). However, no action was taken at the federal level. Feeley (1983) notes that as a result of these investigations of bail, the bail bonding industry was regulated, which ultimately made money bail and bondsmen more substantial component of the criminal process.

After losing attention due to the Great Depression and WWII, bail reemerged as a discussion in the 1950s when national attention was given to the criminal justice system and how the poor (who were disproportionately minorities) were being treated (Feeley, 1983). This newly found attention on poor minorities led to a national conference on bail reform spearheaded by the U.S. Attorney General Robert Kennedy that addressed why poor people were being treated differently than their wealthy counterparts in the criminal justice court system (Jones & Goldkamp, 1991). It was demonstrated that poor people were detained in jail until their court dates at higher rates (Jones & Goldkamp, 1991). Shortly thereafter Congress passed the 1966 Bail Reform Act. Under this act, the judiciary was not able to include the dangerousness to the community variable as a part of the criteria when determining bail except in capital offenses. The decision was to be made solely on the accused's ability to appear in court.

The Manhattan Bail Project was launched by the Vera Institute of Justice (formerly the Vera Foundations); the purpose of the project was to address the unjust practices of pretrial sentencing of the criminal justice system aimed at the poor and to reform the discriminatory monetary bail system by providing more information to the judiciary (Jones & Goldkamp, 1991). The idea was to use the accused's ties to the community as a tool of influence to the court with hopes of providing proof that they did not pose a flight risk. This would hopefully grant the poor more opportunities to be released on their own recognizance. According to Thomas (1976), "The bail system as practiced in New York City has been working unjustly against the poor. While a man of means can post bail in almost any amount, the poor person often finds difficulty in meeting even modest bail in at the price of a bond asked by a professional bondsman..." (p. 12). The Manhattan Bail Project was an immediate success relative to releasing more people without money bail and inspired jurisdictions in other states to evaluate how the poor were treated in



pretrial sentencing. The work of the Manhattan Bail Project influenced Congress to pass the 1966 Bail Reform Act, the first of its kind since the 18<sup>th</sup> century.

As the 1960s passed, crime increased so much so that the focus moved from the protections of the poor to the protection of the community. As a result, the previous bail reform was enacted to protect the poor from being incarcerated prior to trial; however, now that statistics indicated that crime was increasing, the focus shifted to the protection of community residents. As a result of the 1966 Bail Reform Act, those who were out on bail were mostly poor so they and were now scrutinized as the major source for the increase in crime. A number of those released on their own recognizance were re-arrested for violent crimes. This brought a public outcry that dangerous criminals were being released into the community and subsequently committing more crimes. This sentiment influenced the Judiciary Council Committee to study the operation of the Bail Reform Act in Washington, D.C. In an attempt to address the concerns of the committee, Congress changed the 1966 Bail Reform Act in Washington, D.C. to the District of Columbia Court Reform and Criminal Procedure Act of 1970, which allowed judges to use the “danger to the community” variable as a part of the criteria when determining bail. The idea of monetary bail is then reintroduced and the re-emergence of disparities in the bail system is part of the discussion during the pretrial process (Gottfredson & Gottfredson, 1980). This system of bail poses two issues for the poor: (1) discriminatory decision making practices by the judiciary; and (2) not having the money to secure their freedom once money bail is granted. With the popularity of money bail, a capitalistic bail system emerged. Insurance companies, state

departments of insurance, court systems and even entrepreneur opportunists (bail bondsmen<sup>2</sup>) became major players in the bail system.

During the early 1980s, with hopes of alleviating racial and class based injustices in pretrial, the money bail system was scrutinized. The notion of “excessive bail” began to emerge as a major issue in pretrial decisions. Judges began to set bail too high for poor minorities to secure their release back into the community. Excessive bail has yet to be defined by legislation meaning the term is used in a subjective manner. In 1984, Congress enacted the Bail Reform Act allowing extremely high amounts of bail to be set as a method of detaining defendants. However, according to Walker, Spohn and DeLone (2007), in comparison to whites, minorities still experience injustices in the criminal courts due to their race and poor economic status. Requiring defendants to “buy their freedom” is unfair and discriminates against the poor (Meinhold & Neubauer, 2004).

Current bail policies in the United States remain modeled after English law, and many of the same issues regarding ambiguity in the constitutionality of bail are still present. Specifically, issues around what qualities as excessive and who should be detained without bail remain to date. The next chapter will examine the impact of bail research and reform on these issues, as well as the on administration of bail.

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<sup>2</sup> Refers to private entrepreneurs who assist indigent accused in securing their release. The role of the bondsmen will be explained at greater length in later chapters.

## **Chapter 2**

### **THE PROBLEM OF BAIL**

A major function of the criminal justice system is processing people accused of crime. The judiciary is consistently under attack for putting “those dangerous people back on the street.” The bail hearing is the stage in the criminal court system where these decisions are made. Bail, the lost element in the criminal justice system, is the most common form of pretrial services, yet it has been largely ignored and misunderstood by scholars of law and criminal justice. This chapter will examine how legal scholars, criminal justice scholars and bail reformers have looked at bail. I then offer the need for looking at bail as an organizational structure to better understand bail operational procedures and how these procedures produce bail outcomes.

#### **Legal Scholars**

Most legal scholars have focused on the language used in the Eighth Amendment. The Eighth Amendment reads, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted” (U.S. Constitution, 2010). The language is not very clear on who should have rights to bail, what exactly is meant by “excessive,” or under what conditions one should be granted bail. In addition, the amendment fails to guarantee the accused’s rights to bail. In 1965, Caleb Foote wrote “the Eighth Amendment contains some ambiguous language in the Bill of Rights” (p. 969). This ambiguity has brought about a number

of bail decisions to be questioned. In *Stack v. Boyle*, 342 U.S. 1 (1951)<sup>3</sup> twelve accused men were arrested and initially granted bail ranging from \$2,500 to \$100,000 for being in violation of the Smith Act<sup>4</sup>. The District Court intervened and placed \$50,000 bail on each of them. They appealed on the clause that the bail amount was excessive (U.S. Constitution, 2010). The motion was denied but this landmark case became a strong influence on research for other legal scholars and eventually led to bail reform in the Federal Bail Reform Acts of 1966 & 1984.

John Goldkamp (1979) followed Caleb Foote's (1965) work and also wrote about the "right to bail." His book, *Two Classes of Accused: A Study of Bail and American Justice* (1979), not only points out the issue of the Eighth Amendment not guaranteeing bail but also notes that there is no language suggesting judicial discretion when setting bail. The term excessive bail is not clear yet under federal regulations even though it is a clause of the Bill of Rights. Excessive bail is only cited in federal regulations and precedent has yet to establish case law in the states. The definition of excessive bail in the clause was only assumed; however, the clause extended legal authority of preventive detention to Communists or those deemed as "dangerous" to the United States government. This question of a "right to bail" and "excessive bail" under the Eighth Amendment is exemplified in state cases such as *Schlib v. Keubel* (1971) and *Baker v. McCollan* (1979): "We of course agree with the statement from *Schlib v. Keubel* that the Eighth Amendment's prescription of excessive bail has been assumed to have applications to the states through the fourteenth amendment" (Norwood & Novins, 1982, p. 687).

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<sup>3</sup> The court recognized the "traditional right to freedom before conviction [which] permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction." Release before trial is, however, "conditioned upon the accused's giving adequate assurance the he will stand trial and submit to sentence if found guilty." If the court finds that no amount of bail will deter the accused from absconding, then it follows that the accused may be held without bail. (*Stack v. Boyle*, 1951)

<sup>4</sup> "The Smith Act of 1940 made it a criminal offense for anyone to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing the Government of the United States or of any state by force or violence, or for anyone to organize any association which teaches, advises, or encourages such an overthrow, or for anyone to become a member of or to affiliate with any such association" (Fleming, 1983, p. 492).

Two years later in 1981, the Supreme Court made an actual ruling stating that the federal excessive bail clause also applied to the states, *Sistrunk v. Lyons* (1981).

Curiale (1981) discussed how the case of *Sistrunk v. Lyons* 646 F. 2d 64 3d. Cir (1981) set precedent that the federal excessive bail clause applied to not only federal cases but to the states as well. Sistrunk was granted a \$2 million bond on appeal after being granted a new trial on a murder conviction in Pennsylvania (Curiale, 1981). He then filed a motion for a bond reduction claiming that the excessive bail clause in the Eighth Amendment should apply. The United States Court of Appeals agreed that the excessive bail clause applied to the states but denied his motion for a bond release (Curiale, 1981).

Another theme legal scholars have written about pertaining to the Eighth Amendment is who gets bail and how much. The amendment fails to clearly articulate who qualifies for bail and how much bail should be. Drinkwater's (1973) work on bailable and non-bailable crimes in Mississippi provides one example. Drinkwater (1973) discusses the case of Hudson (*Hudson v. McDury* (1972)), who had been held without bail before trial on the non-bailable capital offense of murder (Drinkwater, 1973). However, the Supreme Court had recently abolished the death penalty in *Furman v. Georgia*<sup>5</sup> (1972), therefore true capital cases no longer existed. Hudson argued that he should be eligible for bail as a constitutional right since his charge could no longer be considered a capital offense (Drinkwater, 1973). This case underscored the common issue around the Eighth Amendment regarding under what circumstances an individual could constitutionally be held without bail.

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<sup>5</sup> In 1972, the Supreme Court ruled "capital punishment to be unconstitutional" (Klarman, 2004, p. 367).

Craig Soland's (1978) work in Florida focused on bail being placed on the indigent that is too high for them to pay. Joseph Buro (2003) discusses the discretionary use of cash-only money bail being placed on the accused in *State v. Briggs*<sup>6</sup> (2006) in Iowa.

More recent legal scholars have written about the excessive bail clause in the Eighth Amendment. Kayla Gassman's (2009) work shows how clauses of the Bail Reform Acts of 1966 and 1984 have been extended to keep non-citizens in jail until they have been deported is self-proclaimed as "unjustified detention."

The issues discussed here by legal scholars are all relevant to the Constitution of the United States. Some legal scholars have disputed the structure and purpose of the Constitution in bail. We see the ambiguity in the language has brought about questions of discrimination.

### **Criminal Justice Scholars**

Legal scholars are not alone in contributing to the literature on bail. Criminal Justice scholars have also discussed issues in the bail system. A number of bail studies have contributed to the use of pretrial detention. Pretrial detention is when the accused is denied bail or remains in jail on bail due to not having the resources to pay for their release. A major theme in the criminal justice literature is decision making. One of the first studies on bail was conducted by Arthur Beeley (1927) in 1922. His study focused on how decisions were made to detain the accused before trial and how these decisions at the bail phase could release more people before trial. He looked at the backgrounds (legal and extra-legal variables) of the accused to determine who would be more likely to appear in court, concluding that the decision to detain the accused

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<sup>6</sup> In *State v. Briggs*, according to the Iowa Code 811.2, "the Supreme Court of Iowa held that article I, section 12 of the Iowa Constitution, which guarantees the right to bail by sufficient sureties, did not prohibit the imposition of cash-only bail" (Buro, 2003, p. 13).

before trial was an overuse of power and bail was highly ineffective (Beeley, 1927; Goldkamp, 1979). Beeley's (1927) work became very instrumental in bail reform for the next forty years because it asked the question, "Can we release more people before trial?"

In 1932, Morse and Beattie conducted a bail study in Oregon. Their research on felony defendants reported that 70% were detained, 20% posted bail and 8% were released on their own recognizance (Wice, 1974). Those with less serious offenses were rewarded with low monetary bail and were able to secure their release, while higher bail amounts were given to those with more serious offenses which led to incarceration before trial. Again here we focus only on legal criteria at the decision making phase that uses money as a system to determine the type of person who would show up for court. If the charge at the time of arrest is the only necessary criteria needed, then what purpose does bail serve? Morse and Beattie's work was related to those most likely to be found guilty and those more likely to be found innocent (i.e. trial and sentencing outcomes) (Goldkamp, 1979). They found that those that were able to post bond were more likely to be found innocent and those that were denied bail or did not have the resources to pay their bail were more likely to be found guilty and receive harsher sentences (Goldkamp, 1979). The bail decision was used to divide the accused into two sections: those most likely to be found guilty and those most likely to be found innocent. Their work became a major contribution in the study of bail reform to date (Goldkamp, 1979).

In 1954, Caleb Foote conducted a bail study in Philadelphia. His research supported the same conclusions as previous studies that there was an abuse of power that contributed to those with resources being able to buy their freedom before trial (Goldkamp, 1979). The bail decision was made based on the severity of the charge at the time of the arrest and monetary bail was used to detain. Court observations revealed that community ties and the ability to appear in court had

no impact on the bail decision; during these observations only 30% of the accused were asked questions pertaining to bail (Goldkamp, 1979). Foote also noted that the monetary bail system was used as a means of detaining the accused and as a tool of punishment by setting excessive bail to protect the community from the “dangerous” criminal (Goldkamp, 1979). Foote’s unique contribution to the literature included examining the impact of “failure to appear” on the bail system. He found that “bail jumping” occurred only 2% of the time (Goldkamp, 1979). The majority of the people who jumped bail were those who received low bail amounts and were accused of less serious crimes (Goldkamp, 1979).

As previously mentioned, John Goldkamp revisited Philadelphia some 20 years after Caleb Foote’s work, only to find that the same issues on bail remained. The ambiguity of the Constitution still led to questions of discrimination regarding who should get bail and what qualified as “excessive.” Goldkamp and Gottfredson (1979) revisited these issues surrounding state statutes and criteria used by judges in decision making, in addition to the discretionary abuse of a high cash bail system. The cash bail system was thought to discriminate against the poor, allowing those with resources to “buy their release” back into the community (Goldkamp and Gottfredson, 1979). They conclude this article by suggesting a more structured, comprehensive guideline to bail, which will be addressed in Chapter 6: Bail in Philadelphia (Goldkamp and Gottfredson, 1979).

After Goldkamp’s work in the 70s, other criminal justice scholars have moved toward studying the factors that are used to determine bail and most have focused on whether race/ethnicity and class variables impact bail. We see race and class being a factor in the work of Bynum (1982), Albonetti (1989), Chiricos and Bale (1991), Ayres and Waldfogel (1994), and Schlesinger (2005). All of these studies concluded that there were racial disparities as well as



class disparities in pretrial criminal processing, which leads us to the bail reformers contribution to understanding bail operational procedures (Albonetti, 1989; Ayres and Waldfogel, 1994; Bynum, 1982; Chiricos and Bale, 1991).

### **Bail Reform Movements**

Criminal justice agencies began to initiate changes in the bail system in the 1960s as a result of the Civil Rights Movement. The movement was a collective effort of activists who were fighting for equality for Blacks. Blacks had not been given the same opportunities, been seen or treated as equal, let alone been afforded the same legal rights as whites. There were laws in place in the South that established a system of legal segregation, which held whites in a more prominent position than that of Blacks. The Civil Rights Movement, a movement for rights and equality, was viewed by many southern politicians (whom were all conservatives) as criminal and contributed the movement to a breakdown of “law and order” (Alexander, 2010). Dr. Martin Luther King Jr., one of the leading pioneers of the Civil Rights Movement and the head of the Southern Christian Leadership Conference, led several non-violent campaigns advocating equal rights for Blacks in a number of different cities. He did this with a civil disobedience approach which gained national support from both Blacks and whites. The protests, marches and sit-ins he organized were seen as unlawful and criminal by conservatives rather than political and social movements for equality (Alexander, 2010).

At the same time, the Federal Bureau of Investigations were reporting increases in crime rates. Although disputable, these reports received a great deal of publicity which supported the conservative view that the Civil Rights Movement was a breakdown of “law and order” (Alexander, 2010). The conservatives that opposed Civil Rights were also pushing the

racialization of crime, which resulted in race being brought to the forefront of political issues in the United States.

There were some politicians that did not agree with the conservative ideology that the Civil Rights Movement contributed to the increase in crime. The administration of Lyndon B. Johnson argued that the crime increase was due to police harassment and abuse of Blacks (Alexander, 2010). During the midst of social uprisings in the early 1960s, a new philosophy was brought to the forefront at this time by the youngest President in history, President John F. Kennedy. He won the 1960 presidential election with his political interest in foreign policy, strong advocacy for civil rights legislation and social welfare (Barnes, 2007). Even though he won the presidential election, he faced a number of challenges as a candidate. The public was critical of his age, but were more critical of President Kennedy because he was a Catholic. He knew about “‘no Irish need to apply’ signs and the reality of anti-Catholic prejudice to empathize with those experiencing discrimination” (Barnes, 2007, p. 3). He felt that he could relate to the suffering of Blacks because of his own experience.

As mentioned earlier, President Kennedy was highly interested and focused on foreign policy, so he was very concerned on how denying Blacks civil rights would impact international relations with newly emerging Asian and African countries (Barnes, 2007). He was also well aware of the political benefits and consequences of supporting Black Americans. He phoned Coretta Scott King when Dr. Martin Luther King Jr. was arrested and jailed in Alabama, which brought him great support from Blacks and some northern states (Barnes, 2007). Although he supported Blacks, he was fearful of fully endorsing the civil rights legislation, because being too aggressive in supporting civil rights would alienate some of his southern segregationist Democrats as well as southern voters. So in lieu of proposing legislation of civil rights,

President Kennedy signed executive orders banning discrimination in federally funded facilities and for the federal government to increase the hiring of Blacks (which later became known as affirmative action) (Barnes, 2007).

President Kennedy was a very smart politician. He thought if he could get Black votes, he would not only gain support but also be able to change the racial ideology of the South, especially among the segregationists. He encouraged Blacks to register and vote although the federal government provided no protection for them at the polls. Some Blacks were threatened with physical violence, some lost welfare benefits and others lost their farmland for trying to exercise their right to vote (Barnes, 2007). Southern Democrats and Blacks felt betrayed by President Kennedy. In an attempt to redeem himself, he provided protection for the first two Black students ever to enroll at the University of Alabama. He followed this brave act with a philosophical speech where he dared to go where no other President had gone; he asked American citizens to “examine their consciences” (Barnes, 2007). He spoke openly about war in Vietnam and how our military does not “ask for whites only” to represent the United States. He stated explicitly that Black students should be allowed to attend any public institution without the assistance of military troops as escorts. Barnes (2007) writes, “He spoke of the poor educational opportunities available to Blacks and how their employment prospects and life expectancy were considerably below that of whites” (p. 6). Eventually, President Kennedy stepped up to the plate and called for federal legislation for civil rights. He concluded his speech with:

This is one country. It has become one country because all the people who came here had an equal chance to develop their talents... We have a right to expect the Negro community will be responsible and uphold the law; but they have a right to expect that the law will be fair, that the constitution will be color-blind, as Justice [John Marshall] Harlan said at the turn of the century. This is what we are talking about. This is a matter which concerns this country and what it stands for, and in meeting it, I ask the support of all our citizens. (Barnes, 2007, p. 7)

President Kennedy called not only for a color-blind society, he excluded the “maintaining law and order” message that had been racially charged by other Presidents before him, speaking of equality for all (Barnes, 2007). At the time, he had done the unthinkable, the person holding the highest position of political authority had asked for the full integration of racial minorities into the United States of America.

The Civil Rights Movement and changes in the political climate in the 1960s had an impact on how crime was viewed. These changes are evident in a number of bail reforms that followed this shift of “law and order.” The remainder of this chapter will discuss these reforms and their impact in society. I will conclude with how legal scholars, criminal justice scholars and bail reforms have neglected to talk about bail as a whole, and introduce the need for bail to be examined holistically.

#### *The 1966 Federal Bail Reform Act*

These series of events involving political figures and the racial and social climate are important to the criminal justice reformers, and in particular bail reformers. After the President had endorsed equality, rights and freedom for all, the country began to show support for the Civil Rights Movement. So in 1964 the Civil Rights Act was passed and only a year later, the federal government passed the 1965 Economics Opportunity Act. These endorsements resulted in more attention being given to how Blacks were being treated in the criminal justice system. As a result of the attention, some criminal justice agencies took the position of challenging the system to treat not only Blacks, but all poor people better. We see evidence of this in the state of New York as it became the site of the first bail reform movement.

In New York during the 1960s the question of determining “who got bail” and “what type of bail” became critical issues of concern. The Vera Institute initiated a project to focus on the criteria used in bail decisions. They advocated using extra-legal variables such as race, age, gender, residential stability, employment status, education, and church affiliation (grouped under the term community ties) when deciding who was eligible for bail and setting the appropriate amount of bail (Wice, 1974). It was not until early 1960s that the use of community ties (extra-legal variables) was actually credited with being a major part of the decision on bail, which originated in New York with the Manhattan Bail project. Prior to this, only legal criteria were said to be used for bail decisions and most bail were cash bails only. This means that if a judge set bond at \$1,000, it took \$1,000 to be released. The idea of money bail influenced people to consider this a social problem. This attracted criticisms of the cash bail system and a campaign to ensure equal justice for the poor was launched. The national bail reform movement was developed to protect the poor from excessive bail and reduce the number of defendants in jail awaiting trial. The Manhattan Bail Project sought to address this issue.

The Manhattan Bail Project (1961) was conducted on felony defendants. The Vera Institute claimed that the bail system engaged in discriminatory practices against poor minorities who were not able to secure their freedom due to financial constraints or being denied bail (Gottfredson & Gottfredson, 1980). Thomas (1976) states, “The bail system as practiced in New York City has been working unjustly against the poor. While a man of means can post bail in almost any amount, the poor person often finds difficulty in meeting even modest bail in at the price of a bond asked by a professional bondsman...” (p. 12). Due to the Manhattan Project, the use of the accused’s background and his or her ability to pay for release became the major criteria used in decision making for bail. This provided information to the judiciary which better

equipped them to make the bail decision (Gottfredson & Gottfredson, 1980). After the new policy was instituted, the project produced results that supported the notion that detaining the accused before trial had a strong correlation to guilty pleas and harsher sentencing outcomes. Other results indicated a positive relationship between those that were released on their own recognizance (no money required) and their appearance in court.

The Manhattan Bail Project received a great deal of attention from politicians. After President John F. Kennedy was assassinated in 1963, President Lyndon B. Johnson and Attorney General Robert Kennedy created a committee to investigate how poor people were being treated by the federal court system. The results indicated that people with money received justice at any and all stages of the federal criminal process, specifically bail. Poor people were being detained before trial more often than people with money. These findings were the catalyst for the first National Conference on Bail and Criminal Justice in 1964, which eventually led to the passing of the first Federal Bail Reform Act of 1966<sup>7</sup> signed by then President Lyndon B. Johnson (Goldkamp, 1979). This act stressed the use of community ties, financial status, employment status, mental status, educational status, and even marital status in the bail decision. The act also gave judicial officers other options for bail, such as release on recognizance, minimal restrictive conditions before trial and re-emergence of surety bail (Goldkamp, 1979). According to Walker (1993):

The judicial offices shall, on the basis of the available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused family ties, employment, financial resources, character and mental conditions, the length of his residence in the community, his record of convictions and his

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<sup>7</sup> “Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required” per 18 U.S.C.A. section 3146 (a) (Goldkamp, 1979).

record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings. (p. 22)

The cash bail system had been the dominant bail option for the judiciary until the Manhattan Bail Project demonstrated that people released without having to pay bail still showed up for court, so it made sense to use a non-monetary system for pretrial release; after all the primary purpose of bail is to get the accused to show up for court appearances. The surety bail option introduced the use of “surety agents” or bail bondsmen to bail operational procedures. Bail bondsmen are private business owners who are licensed as surety agents (derived from the root word insurance) which allows them the ability to post bond for the accused. The Manhattan Project was the first to offer a system of criteria and regulations to bail operations, but others were soon to follow, such as the standards created by the American Bar Association.

#### *The Standards of the American Bar Association (1968)*

In 1968 the American Bar Association published the first criminal justice pretrial standards. These standards mimicked those of the Bail Reform Act of 1966. They reiterated the purpose of bail was to “ensure the appearance in court,” as well as advocated for release on recognizance rather than money bail and applying the least restrictive conditions before trial (Goldkamp, 1979). Other standards came in the form of recommending the use of summonses or citations for offenses that carried a maximum penalty of one year or less, the limited use of cash bail, the use of a 10% program<sup>8</sup>, and the abolition of the use of the bail bondsmen. One of the key additions to the American Bar Standards was the use of “dangerousness to the community” as a key variable when making judicial bail decisions. Unlike the Bail Reform Act, the ABA Standards required more evidence that the accused posed a significant danger to the community

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<sup>8</sup> Refers to a type of bond commonly known as the 10% bond, which requires the accused to post 10% of the total bond amount. The types of bail will be defined at greater length in Chapter 3.

for that person to be detained before trial. This was done to relieve the judiciary of having to use their intuition for risk analysis when determining who was a danger to the community (Goldkamp, 1979). Yet they too failed to define what should be perceived as “danger;” the fact that “danger” was not defined was crucial to the next bail reformers.

*The Preventative Detention Code of the District of Columbia (1970)*

The 1966 Bail Reform Act and national bail reform movement accomplished a reduction in the number of accused detained before trial and a slight reduction of discriminatory treatment of the poor; however, this reform did not last long. For example, the 1971 National Bail Survey indicated that a majority of the cities reported an increase in accused being released before trial. Philadelphia in particular reported a substantial drop from an alarming 75% to 25% of all accused persons who were detained for more than 24 hours. Also, the accused persons that received release on recognizance bonds increased from 5% to 23% as a result of the national movement (Walker, 1993). Yet it was not enough to maintain this method as the most used in pretrial decision making.

As the 60s began to fade, federal statistics reported that crime was on the rise. This increase in crime may in part be attributed to the riots that erupted in the summer of 1964 in Harlem and Rochester, in Watts and other cities in 1965, and in 38 cities in 1966. Conservatives attributed the migration of southern Blacks to northern cities like Philadelphia and Rochester as one culprit for the increase in crime (Alexander, 2010). Alexander (2010) writes:

Barry Goldwater, in his 1964 presidential campaign, aggressively exploited the riots and fears of Black crime, laying the foundation for the “get tough on crime” movement that would emerge years later. In a widely quoted speech, Goldwater warned voters, “Choose the way of [the Johnson] Administration and you have the way of mobs in the street.” (p. 41).

This began the shift of the cultural climate in the United States.



In 1968, President Lyndon B. Johnson decided not to run for President. He withdrew months before the nominating convention. This left the door open for the Republican nominee Richard Nixon. Public discussion began to transition from segregation, equality, rights and freedom to crime (Alexander, 2010). This brought about a political shift in the criminal justice system and in this case bail. The focus of protecting the poor from discrimination in the judicial system began to shift to the mindset of protecting the community from the dangerous criminals.

Prior to winning the 1968 election, Richard Nixon pursued a southern racial strategy. As Alexander (2010) states, “He [President Nixon] emphasized that you have to face the fact that the whole problem is really the Blacks” (p. 44). In the late 60s and early 70s conservatives argued that poverty was caused by Black culture not by structural factors related to race and class as noted by Alexander (2010), “As reported by the Gallup poll in 1968, 81% agreed that ‘law and order has broken down in this country’ and a majority blamed Negroes who started riots and Communists” (p. 45). The change in the racial and social climate contributed to the increased use of detaining the accused before crime. Release on recognizance began to fade as the guidelines became much stricter for non-financial release.

The Preventive Detention Code of the District of Columbia was passed in 1970. This code enacted procedures to detain the accused who were deemed dangerous before trial. It included not only those accused of committing capital offenses, anyone was a potential candidate to be detained. As far as criteria, the preventive detention code is as follows: “persons may be eligible for ‘detention prior to trial’ if they are: (1) charged with a ‘dangerous crime,’<sup>9</sup> (2)

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<sup>9</sup> According to D.C. Code 23-1331 (3), “the term dangerous crime means (1) taking or attempting to take property from another by force or threat of force, (2) unlawfully entering or attempting to enter any premise adopted for overnight accommodation of persons or for carrying on business with the intent to commit an offense therein, (3) arson or attempted arson or for carrying on business, (4) forcible rape, or assault with the intent to commit forcible

charged with a ‘crime of violence,’<sup>10</sup> (3) charged with obstruction of justice, or (4) charged with a crime of violence and believed to be an addict” (Goldkamp, 1979, p. 41). In addition to the criteria outlined by the bail reform act, standards outlined by the ABA, and the preventive codes on bail, criminal justice agencies began to become more involved in creating standards relevant to bail.

### *The Standards of the National Association of Pretrial Service Agencies*

In 1978, the first edition of the National Association of Pretrial Service Agencies’ standards was released. These standards, referred to as “Performance Standards and Goals for Pretrial Release” provided the first clearly defined goals for pretrial decision making and pretrial detention. It also provided a guide for magistrate judges, pretrial personnel and other members of the criminal justice arena working in pretrial services, in an attempt to establish fair and efficient services (The Board of Directors of the National Association of Pretrial Services Agencies (NAPSA), 2004). They also established a framework of how to create pretrial service programs, effectively collect information from the accused and monitor the accused when released.

When this first edition was released, the bail reform movement was over a decade old. The standards embodied the thinking of the national bail reformers who were a part of the Manhattan Bail Project in New York in the early 1960s. They too carry the presumption of favoring release on recognizance or release on special conditions over that of money bail (Goldkamp, 1979). Insisting the judiciary be accountable for decision making, the reformers

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rape, or (5) unlawful sale or distribution of a narcotic or depressant or stimulant drug (as defined by an Act of Congress) if the offense is punishable by imprisonment for more than one year” (Goldkamp, 1979, p. 42).

<sup>10</sup> According to D.C. Code 23-1331 (4), “the term ‘crime of violence’ means murder, forcible rape, carnal knowledge of a female under the age of 16, taking or attempting to take immoral, improper or indecent liberties with a child under the age of 16 years, mayhem, kidnapping, robbery, burglary, voluntary manslaughter, extortion, or Blackmail” (Goldkamp, 1979, p. 42).

required the judiciary to clearly articulate in writing the conditions of release and the reasons for such. In addition, they supported the recently passed preventive detention code while acknowledging that it usually occurs in the form of setting high cash bail.

The standards are clearly articulated in four parts; Standard 1 states:

Begins with the statement and purpose of the Pretrial release decision; providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, minimizing the unnecessary use of detention, and protecting victims, witnesses, and the community from threat, danger, or interference. (The Board of Directors of NAPSA, 2004, p. 4)

The next standard (1.1) outlines principles for the pretrial process and how the bail decision is made. Standard 2 clearly articulates the process one endures before the first appearance in court and immediately afterwards. Standards 2.3-2.5 provide detailed information on the types of bonds, including personal recognizance, conditions of release, or financial conditions of release. Standard 2.6 provides information on court orders concerning release, while standards 2.7-2.10 outline in detail procedural duties in the event there is a reason for detaining the accused prior to trial. Standard 3 discusses the role, purposes and functions of pretrial service agencies and Standard 4 discusses how to manage the accused once bail has been determined, whether it be release or detention (The Board of Directors of NAPSA, 2004).

#### *The 1984 Federal Preventive Detention Act*

The election of Ronald Reagan in 1980 demarcated a socio-political shift from a “period of relative liberalism” to one of “relative conservatism” (Nunn, 2002, p. 388). One of the major indicators of this shift was Reagan’s approach to crime, specifically demonstrated through the War on Drugs, formally declared in October of 1982. Reagan’s approach to crime was more covert than Nixon’s had been in that he did not explicitly link race and crime; however, Reagan

did create racialized images of welfare and drug abusers through his rhetoric based on “deeply held cultural attitudes about people of color and their links to drug use and other illicit behavior” (Nunn, 2002, p. 391). The War on Drugs caused huge increases in arrest rates contributing to a widely held fear of crime. There was an outcry from Reagan’s supporters that crime needed to be controlled and the community needed to be protected from criminals, especially those out on bond. Against this backdrop, the Federal Preventive Detention Act was signed in 1984. This act granted judges expanded judicial authority in setting excessive bail and denying bail using “the nature of the offense, the weight of the evidence against the defendant, the history and characteristics of the defendant, and the nature and seriousness of the danger posed by possible release” (Walker, 1993, p. 17).

According to the national survey conducted by the Pretrial Service Agency (1990) the second bail reform movement was a success. Overall, the movement increased the number of detainees from 24% to 29 percent. These numbers reflect those denied bail and those that were detained because they were unable to raise the necessary cash needed to secure their freedom. The law prompted bail as a means of detaining the accused and as a method of punishment (Walker, 1993).

Legal and criminal justice scholars, as well as criminal justice agencies have contributed to bail reforms. The landmark changes that have occurred in the bail industry include two federal bail reform laws, one reform in the District of Columbia and a national pretrial standard on release. The 1966 Bail Reform Act introduced the use of community variables (e.g. community ties and residential stability) in deciding bail, in addition to releasing more people on their own recognizance. The 1970 Preventive Detention Code of the District of Columbia and the Bail Reform Act of 1984 enabled the judiciary to deny bail to those deemed as being dangerous

threats to society; while the 1978 Standards of the Pretrial Association Service Agencies established the first standards for setting bail and outlined the purpose of bail (Walker, 1993).

### **The Importance of Organizational Structure in Understanding Bail**

The past research on bail, past reforms and past debates on bail have made significant contributions to the field, yet they have missed how the organizational structure of bail shapes the process. Bail is not only about the Eighth Amendment, the decision making, nor is it solely about the seriousness of the offense or the dollar amount attached to the accused's freedom. Bail research should provide an understanding of the interrelated roles of the major players in the bail system, as well as how extra-legal variables such as race and social class impact the pretrial decision making process. Furthermore, we need to understand how this phase of the criminal court system contributes to other phases of the system such as trial and sentencing. Is what we see in court, watch on television, read in the newspaper and even read about in scholarly literature about "excessive bail" or discriminatory practices in criminal justice systems a result of a larger structure that shapes the individual and group processes that play out in court? It is the mission of this dissertation to address these issues and contribute to the literature an organizational analysis of the bail system that will provide its readers with an understanding of the individual roles, group processes and structure of each major player in bail and how they impact the function of bail.

#### *Theoretical Framework*

I studied the system of bail to provide a better understanding of bail's operational procedures. This analysis of the bail system was firmly rooted in organizational theory focusing on interdependencies, adversarial relationships and institutional maintenance (Feeley, 1992). These are common components of an organization, by which the bail system was analyzed for

this study. An organization is a “structured social system consisting of groups of individuals working together to meet some agreed-on objectives” (Daft, 2009, p. 34). Furthermore, Daft (2009) describes organizations as social entities that are goal directed and designed as deliberate, structured and coordinated activity systems that are linked to the external environment.

According to Eisenstein and Jacob (1977) there are a number of characteristics shared by the courtroom workgroup personnel, which includes the judge or magistrate, prosecutor, defense attorney (private and public defenders), the accused, and the clerk of court, that are consistent with other organized groups: “(1) they exhibit authority relationships; (2) they display influence on relationships, which modify the authority relationships; (3) they are held together by common goals; (4) they have specialized roles; (5) they use a variety of work techniques; (6) they engage in a variety of tasks and (7) they have different degrees of stability and familiarity” (Eisenstein & Jacob, 1977, p. 20). This creates the complex network of on-going relationships that determines who does what, when and how in the courtroom setting. For example, a judge is the formal authority in criminal courts and makes the final decisions on bail; prosecutors represent the state and make recommendations on bail that derive from their responsibility to protect the state and community; and the defense attorney (including private and public defenders) fights for the rights of the accused by making recommendations on bail that they deem equitable for their clients. The clerk of court’s official role is to be the keeper of records, the person that creates the bail calendar but also organizes the files needed for court and records bond information after court. Each courtroom workgroup member maintains a discrete role, interacting with other workgroup members and contributing to the overall organization of the bail system. Examining the individual roles provided important data about individual level decision making that occurs in the courtroom.

This level of analysis combines psychological (organizational behavior) and sociological (organizational theory) perspectives. Organizational behavior focuses on a micro-analysis of the individuals and their roles in the bail system while a macro-analysis examines the organization as a whole (Daft, 2009). The micro-analysis centers on individual decision making at each phase of the bail system, using legal and extra-legal variables. Legal variables include criminal justice history, name of the offense, facts of the case, statutes and legislation, and sentencing guidelines. Extra-legal variables include age, race, gender, socioeconomic status and community ties. This analysis also explores the impact of *inside influences* which are those variables that are inside the walls of the courtroom, including information, negotiation, interaction, time, support and recommendations. In addition, *outside* variables are incorporated in the analysis, including media, political pressure, overcrowding, bail bondsmen, and bail revenue. Daft (2009) defines these components as “all elements that exist outside the boundaries of the organization and have the potential to affect all or part of the organization” (p. 7).

Organizational theory (OT) is the study of organizations for the benefit of identifying common subtopics: individual processes, group processes and organizational processes (Daft, 2009). Organizational theory is best described by themes for the purpose of solving problems, maximizing efficiency and productivity, and meeting the needs of stakeholders (Daft, 2009). Broadly, OT can be conceptualized as studying three major areas: individual process, group process and organizational process (Daft, 2009). To understand how the bail system works, I extended my research to include the organizational environment. In relation to the first phase of the criminal court system, individual process may be understood as the individual roles of the courtroom workgroup members, group processes may be understood as the intersection of individual roles in the administration of bail, and the organizational process may be understood

as the ways by which these group processes are systematically organized to function as a system. All levels of process impact and are simultaneously impacted by the others. OT allows us to get underneath outcome data and investigate how the court produces outcomes. The use of organizational theory challenges scholars to go beyond single lenses by including multiple factors in decision making; this perspective demands a “sum of all parts” view of the system.



## Chapter 3

### QUANTITATIVE METHODS

#### Data Sources and Data Collection

The previous chapters raised theoretical questions regarding the impact of legal and extra-legal variables on bail decisions. To shed some light on these issues, I conducted a secondary analysis of the following data set: the *United States Department of Justice Statistics, State Court Processing Statistics 1990-2004* [originally known as the National Pretrial Reporting Program]: *Felony Defendants in Large Urban Counties*. This study sought to determine whether accurate and comprehensive pretrial data could be collected at the local level and subsequently aggregated at the national level. The resulting data set contains data about felony defendants in 40 of the nation's 75 most populated counties in even numbered years from 1990-2004. Only cases recorded during the month of May were included; these cases were tracked until final disposition or until one year after the initial filing. The data set, made available in 2006, is a cumulative file, housed at the National Archive of Criminal Justice Data, and made available through the Inter-University Consortium for Political and Social Research (ICPSR), which was accessed via the University of Michigan's website. Access to the data set was granted by then Senior Research Associate for the Pretrial Justice Institute, Dr. David Levin.

Data collection for the study included survey questionnaires mailed out to selected counties. Surveys consisted of 51 questions, broken down into 9 sections which included Case Information, Pretrial Release/Detention Information, Court Appearance Information, New Arrest Record Information, Other Release Status Change, Alternative Criminal Case Proceeding,

Adjudication Information, Sentencing Information and Prior Criminal Record Information. This study used only data gathered in Case Information, Pretrial Release/Detention Information, Court Appearance Information, and New Arrest Record Information – the sections pertaining to bail hearings/pretrial.

In addition, I conducted a statistical analysis of qualitative data collected during one month of observations of bond hearings in both Atlanta and Philadelphia. The ethnographic field notes were coded using variables associated with bail recommendations and decisions and transformed into a quantitative data set. The data set includes approximately 30 variables regarding demographic information about the accused, traditionally researched extra-legal and legal variables related to bail, as well as other variables developed to more thoroughly understand the factors impacting this phase of the criminal court process. This data set was created and analyzed to provide an expanded view of bail processes by including more variables such as socioeconomic status and current employment status, as well as providing a more recent picture of the bond procedures in both of these cities. In addition, the data in the ethnography data set addresses the limitations of the BJS data set. More specifically, the BJS data only examined outcomes without including any measures related to the actual bail procedures, such as interaction between the magistrate and the accused and the presence of support for the accused in the courtroom. These limitations greatly reduce the understanding of how bail decisions are made.

### **Bureau of Justice Data Sample**

The *State Court Processing Statistics* data set was reduced to Atlanta and Philadelphia, which were selected to conduct a comparative analysis of two bail systems. This data set provides basic quantitative data about bail outcomes in the selected cities, identifying individuals

who were denied or granted bail during their initial appearance in the criminal court process, and for those who were granted bail, records the type of bail (i.e. non-financial or financial). In addition, it includes descriptive data on the role race/ethnicity and gender (also referred to as extra-legal variables) play in both Atlanta and Philadelphia in bail outcomes. The purpose here is three-fold: (1) to determine if racial/ethnic differences in bail outcomes exist within Atlanta or Philadelphia; (2) to determine if gender differences in bail outcomes exist within Atlanta or Philadelphia; and (3) to determine if racial/ethnic or gender differences exist between Atlanta and Philadelphia.

### *BJS Sample Demographics*

Atlanta reported data on 1,748 cases compared to Philadelphia with 4,043 cases. Atlanta had fewer cases because (1) it is a smaller city and (2) it failed to report pretrial data in 1994 and 1998. It is helpful to describe the accused in the study before proceeding with analyses of the impact of legal and extra-legal variables on bail decisions in Atlanta and Philadelphia. (See Table 3.1).

Table 3.1: Demographics of Cases for Atlanta and Philadelphia from the State Court  
Processing Statistics 1990-2004 (BJS Data Set)

	<b>Atlanta (N = 1,748)</b>	<b>Philadelphia (N = 4,043)</b>
<b>Male</b>	84%	85%
<b>Female</b>	16%	15%
<b>White (Non-Hispanic)</b>	10%	13%
<b>Black (Non-Hispanic)</b>	85%	57%
<b>Hispanic (Any)</b>	3%	13%
<b>Ethnicity Missing</b>	2%	17%
<b>Age Range</b>	16-70	15-80

Atlanta's population is approximately four hundred and twenty thousand, while Philadelphia is more than three times larger, with 1.53 million residents (U.S. Census Bureau, 2010). Blacks (non-Hispanic) account for 54% of Atlanta's total population, yet more than 4 out of 5 offenders in the study are Black. In Philadelphia, 44% of the total population is Blacks, although Blacks make up over half of the total offenders in the study (and 69 percent of those for whom ethnicity was coded) (U.S. Census Bureau, 2010). Whites (non-Hispanic) account for 36% of the total population in Atlanta, but only 10% percent of the offenders in the study; in Philadelphia whites make up 39% of the total population and 13% of the study (U.S. Census Bureau, 2010). Hispanics in Atlanta make up 5% of the total population and 3% of the study and in Philadelphia Hispanics make up 13% of the total population and 13% of the study (16% of those for whom ethnicity is known) (U.S. Census Bureau, 2010). Blacks are the only racial/ethnic group to have

a percentage of offenders that is larger than their representation in the total population in both cities.

Males in Atlanta and Philadelphia make up 50% and 47% of the total populations of these two cities respectively, but account for more than 8 out of 10 offenders in both locations (U.S. Census Bureau, 2010). This is consistent with the criminal justice literature that finds that men make up the great majority of those in the criminal justice system.

Bail decisions include bail being denied and bail being granted. When the magistrate decides to hold the accused without issuing bail or when the magistrate is unable to set bond due to statutes regarding non-bailable offenses<sup>11</sup>, bail has been denied. These instances account for the percentages of “bail denied” cases in subsequent tables. Bail is granted when the magistrate sets a bail, even if the accused is unable to meet the conditions of the bond. These cases account for the percentages of “bail granted.” For those who are granted bail, it may be issued as a non-financial bail or financial bail. Non-financial bail are those bonds which do not require cash or property for the accused to secure release (e.g. release on recognizance). Financial bail are those bonds which require the accused to post money or property, or use the services of a bail bondsman to secure release.

Table 3.2 describes the number of people that were denied bail, granted bail or fell into the “other” category during their first appearance in court either in Atlanta or Philadelphia. It is important to note that in Atlanta the state must establish probable cause for the arrest as a part of the bail court procedures. If the magistrate judge does not find probable cause for the arrest, then

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<sup>11</sup> It is important to note that the structure of the bail denied category in the BJS data set is one of its limitations. Specifically, the reason for the magistrate denying bail (i.e. whether the judge decided to hold the accused without bail or whether the judicial authority of the magistrate was limited) was not recorded. In addition, the data set does not include bail hearings beyond the first appearance, meaning no further bail decisions are available for the cases recorded as having bail denied. This limitation is addressed in the data recorded for the ethnography data set.

the case is dismissed. These cases dismissed due to probable cause account for some of the missing cases in Atlanta. In addition, some of the missing cases in Atlanta are attributed to rescheduling due to incomplete files as a result of missing charging documents or unfinished interviews with pretrial services. In other cases, the accused may not be present for the bail hearing as they have been sent to the local hospital or loaned out to another jail. In addition, cases which had already been indicted or where the outcome was not recorded were included in the missing or other category for both cities.

Table 3.2: Bail Denied vs. Bail Granted in Atlanta & Philadelphia (BJS Data Set)

	<b>Atlanta</b> <b>(N = 1,748)</b>	<b>Philadelphia</b> <b>(N = 4,043)</b>
<b>Bail Denied</b>	23.5%	4.1%
<b>Bail Granted</b>	48.5%	77.1%
<b>Other<sup>1</sup></b>	28%	18.8%

<sup>1</sup> This category refers to cases that were either missing or fell into one of four categories: 1. the case was dropped by Fulton County Magistrate Judge due to a lack of probable cause, 2. the accused was loaned out to Grady Memorial Hospital in Fulton County, 3. the case had already been indicted, or 4. the accused was loaned out to another city or county jail.

Atlanta denies bail to almost 1 out of 4 people that come before the court whereas Philadelphia very seldom denies bail. The discrepancy between the two locales may be explained in part by variables or contributing factors that happen outside of the bail courtroom. For example, both Atlanta and Philadelphia have statutes that limit the magistrate judge's legal authority to set bail on certain offenses. In Atlanta these offenses are known as the Seven Deadly

Sins which include: child molestation, aggravated child molestation, rape, treason, felony murder, arson and armed robbery. Anyone arrested for any of these offenses, regardless of the inclusion of other factors used to determine bail, is automatically denied bail in this city.

Philadelphia has only 2 offenses that are listed as “non-bailable” – felony murder and fugitive of justice under Rule 520. Even though these are listed as non-bailable offenses, magistrates often still set bonds in these cases. However, the bonds set are typically enormously high, making it virtually impossible for the accused to post. The legislative differences in judicial regulations of bond setting between Atlanta and Philadelphia contribute to the variation found in the percentages of cases where bail was denied in both cities. Atlanta denies bail more often than Philadelphia partially because of the statutes that govern their bail system. A person arrested for armed robbery in Atlanta and granted a bail hearing is automatically denied bail because the state statute does not allow bail to be set for an armed robbery offense by a magistrate court judge. The state of Georgia has taken the judicial power away from magistrates to set bail on offenses labeled as the “Seven Deadly Sins,” which must be sent before superior court judges to have bond set. This second hearing typically occurs two weeks after their first appearance. Whereas in Philadelphia, a person arrested on an armed robbery offense has the right to a bail hearing and the magistrate court judge has the judicial authority to set bail. Thus, Philadelphia has more people who are granted bail due to the authoritative power held by magistrate judges. This is why it is imperative to look at who is getting bail and what type in each city. Bail can be granted or denied due to outside influences such as the aforementioned statutes or as a result of inside influences such as judicial discretion. Statistics around the types of bail granted in both cities will now be discussed. The table below compares the percentages of who got out of jail for free (i.e. non-financial bail) and who had to pay to get out (i.e. financial bail). (See Table 3.3).

Table 3.3: Non-Financial vs. Financial Bail in Atlanta and Philadelphia (BJS Data Set)

	<b>Atlanta</b> (N = 848)	<b>Philadelphia</b> (N = 3116)
<b>Non-Financial</b>	35.6%	45.7%
<b>Financial</b>	64.4%	54.3%

There are a number of different types of both non-financial and money bail, which will be discussed at further length in later chapters. As previously mentioned, Philadelphia grants bail to a far higher percentage of people than Atlanta. Additionally, Philadelphia also lets people out of jail without having to pay more than Atlanta (i.e. non-financial bail). Again we see outside variables or contributing factors that impact the court. The issue of overcrowding in both locales is a point of concern that plays out in bail decisions. According to courtroom workgroup members, both cities have jails that are under federal decrees relative to overcrowding issues, resulting in fines of \$1,000 per day per person that they are over the limit. For this reason, magistrates in both cities may be more likely to make pretrial release more accessible by setting non-financial bonds or lower financial bonds more frequently in order to reduce overcrowding.

To further understand the impact of extra- legal variables on bail decisions, race and gender were added to the discussion of who is granted bail and who is denied bail in each city. (See Table 3.4).



Table 3.4: Bail Denied vs. Bail Granted in Atlanta and Philadelphia by Race and Gender (BJS Data Set)

	<b>Atlanta</b>		<b>Philadelphia</b>	
	<b>Bail Denied</b>	<b>Bail Granted</b>	<b>Bail Denied</b>	<b>Bail Granted</b>
<b>Male (n=1044, 2739)</b>	37%	63%	5%	95%
<b>Female (n=213, 537)</b>	14%	86%	3%	97%
<b>White (n= 137, 458)</b>	21%	79%	3%	97%
<b>Black (n= 1070, 1792)</b>	33%	67%	5%	95%
<b>Hispanic (n= 31, 428)</b>	39%	61%	4%	96%

Table 3.4 describes the percentages of individuals that were either denied bail or granted bail in Atlanta and Philadelphia. In Atlanta, we see gender having an impact on the decision-making process. The likelihood of males being denied bail is more than 2.5 times higher than that of females. In Philadelphia the differences between males and females who are denied bail is much smaller, even though women are denied bail slightly less often. When comparing gender between the two cities, Atlanta denies bail to males 7 times more often than Philadelphia and Atlanta denies bail to females almost 5 times more often than Philadelphia. Again, Philadelphia grants bail at a much higher rate than Atlanta even when gender is taken into account.

In addition, this table describes the percentages of people in different racial/ethnic categories that were either denied bail or granted bail during their first appearance in court in Atlanta and Philadelphia. Overall, in Atlanta the likelihood of being granted bail is much lower

than it is in Philadelphia. Like the gender variable, race/ethnicity appears to make a difference in Atlanta much more than it does in Philadelphia. In Atlanta, Blacks and Hispanics are denied bail more often than their white counterparts, while in Philadelphia the differences between race/ethnicities are extremely small.

At this juncture in the study, Atlanta appears to be much harsher on the accused when it comes to who is given the opportunity to be released back into the community before trial. But what of those who are granted bail; does race/ethnicity and gender have an impact on who gets out of jail for free (i.e. non-financial bail) compared to who has to pay (i.e. financial bail) in each city?

Table 3.5 describes the percentages of people by gender and race that were granted bail during their first appearance in court in Atlanta and Philadelphia, indicating whether those in this group were granted non-financial or financial bonds. In both cities, there are modest differences in the rates at which different ethnic groups receive non-financial bail. Although Philadelphia is somewhat more likely to grant non-financial bail, the two cities seem generally similar.

Table 3.5: Non-Financial Bail vs. Financial Bail in Atlanta and Philadelphia by Race and Gender  
(BJS Data Set)

	<b>Atlanta</b>		<b>Philadelphia</b>	
	<b>Non-Financial</b>	<b>Financial</b>	<b>Non-Financial</b>	<b>Financial</b>
<b>Male (n=664, 2588)</b>	34%	66%	5%	95%
<b>Female (n=184, 523)</b>	41%	59%	46%	54%
<b>White (n=108, 443)</b>	31%	69%	38%	62%
<b>Black (n=715, 1709)</b>	36%	64%	41%	59%
<b>Hispanic (n=19, 411)</b>	32%	68%	47%	53%

In Atlanta, the difference between males and females receiving non-financial bail is very slim, with women having a slight edge in being granted non-financial bonds. In Philadelphia, we see a large discrepancy between the men and the women when it comes to receiving non-financial bail. Females receive non-financial bail 9 times more often than men. This could be attributed to the types of offenses committed by men and women; men commit violent crimes more frequently than women in both cities. However, non-financial bail is usually offered to misdemeanants and first time offenders; because men are more often accused of committing felony offenses or have a criminal history, they are often disqualified from non-financial bail. Between the two cities, a large variance is only present among the men. Men in Atlanta receive non-financial bail almost 7 times more often than the men in Philadelphia indicating that gender does have an impact on the type of bail granted.

The differences in relation to race/ethnicity and who received non-financial versus financial bail is more modest within cities. In Atlanta, whites, Blacks and Hispanics are granted non-financial bonds at similar rates. In Philadelphia, the rates of non-financial bond for whites and Blacks were similar. However, the percentage of Hispanics receiving financial bond is larger than whites or Blacks. Across cities, all races are less likely to receive non-financial bond in Atlanta than in Philadelphia.

To examine more carefully the attributes of the accused that may have impacted the bail decision, bivariate logistic regressions involving additional legal variables were considered. The dependent variables were coded as dichotomous (bail denied/bail granted and non-financial/financial). This was a risk analysis controlling for legal and extra-legal variables. Table 3.6 provides the outcomes of the logistic regressions.

Table 3.6: Logistic Regression Analysis (BJS Data Set) – Odds Ratios for Bail Denied  
and Non-Financial Bail

	<b>Atlanta</b>		<b>Philadelphia</b>	
	<b>Bail Denied (n=411)</b>	<b>Non-Financial (n=302)</b>	<b>Bail Denied (n=166)</b>	<b>Non-Financial (n=1424)</b>
<b>Violent</b>	_____	_____	3.107***	0.200***
<b>Property</b>	_____	_____	_____	2.709***
<b>Prior Convictions</b>	_____	_____	1.808***	0.723**
<b>In Criminal Justice System</b>	2.356***	_____	2.593***	_____
<b>Past Failures to Appear</b>	_____	1.759*	1.435**	_____
<b>Age</b>	1.022***	1.017*	_____	_____
<b>Male</b>	2.720***	_____	1.948***	_____
<b>Non-White</b>	1.895**	_____	1.678***	1.334*

\*  $p \leq 0.05$  \*\*  $p \leq 0.01$  \*\*\*  $p \leq 0.001$

According to this table, in Atlanta the odds of predicting that one's bail will be denied increase when the person is already involved in the criminal justice system (the only legal variable) at the time of the arrest. More specifically, individuals who were involved in the criminal justice

system at the time of arrest were 2.356 times as likely to have bail denied as those who were not. In addition, the age of the accused, being Black or Hispanic, and being male increase the likelihood (extra-legal variables) of having bail denied. More specifically, for every one year increase in age, the accused is 1.022 times as likely to have bail denied. Individuals who are non-white (Black or Hispanic) are 1.895 times as likely to have bail denied as whites and males are 2.720 times as likely to have bail denied as females. Similar to the findings in Atlanta, in Philadelphia being involved in the criminal justice system at the time of arrest makes the accused 2.593 times as likely to have bail denied. However, in Philadelphia, we see more legal variables, including committing violent crimes and having prior convictions, having an impact on the odds of having bail denied. Having committed a violent crime makes the accused 3.107 times as likely to be denied bail and having prior convictions makes the accused 1.808 times as likely to be denied bail. In regards to extra-legal variables impacting the likelihood of having bail denied, we see that being male and non-white increase this likelihood. More specifically, non-whites (Blacks and Hispanics) are 1.678 times as likely to be denied bail as whites; males are 1.948 as likely to be denied bail as females. When predicting which variables impact the odds of receiving non-financial bail, Atlanta's significant variables are past failures to appear and age of the accused. More specifically, for every year increase in age, the accused are 1.017 times as likely to be granted a non-financial bond. Having a prior failure to appear makes the accused 1.759 times as likely to be granted a non-financial bond.<sup>12</sup> Again in Philadelphia we see more variables having a statistical impact on this decision. Being arrested for a violent offense and having prior convictions decrease the odds of one receiving a non-financial bail. More specifically, those accused of a violent offense are 0.200 times as likely to receive a non-financial bond as those

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<sup>12</sup> This finding was in contrast to the commonly held belief that failures to appear make it more likely that the accused will be granted a financial bond, if one at all. Further investigation around this variable is necessary to understand the reason behind this finding.

accused of a non-violent offense. On the contrary, those accused of property offenses were 2.709 times as likely to receive non-financial bond as those accused of other types of offenses (i.e. violent, drug). Those with prior convictions are 0.723 times as likely to receive a non-financial bond as those without prior convictions. Interestingly, in Philadelphia, non-whites were 1.334 as likely to receive non-financial bonds as whites.

### **Ethnography Data Sample**

Similar to the BJS data, this data set identifies individuals who were denied or granted bail during their initial appearance in the criminal court process, as well as the type of bond granted. Race/ethnicity and gender were also explored using this data to determine if information comparable to that found in the BJS data would be evident. Similar to the BJS data, the data for the ethnography set was recorded during one month of data collection in each city; however, far fewer cases are included as data was recorded through ethnographic observations and not computer generated information. As mentioned, this data set addresses a number of the limitations found in the data collected for the BJS data set. In particular, the former provides information regarding the processes inside the courtroom that impact bail outcomes, which will be discussed in later chapters. Also, this data provides a more recent picture of bail outcomes with regard to race and gender in Atlanta and Philadelphia for the quantitative analysis. In addition, the ethnography data set recorded information regarding whether an individual was denied bail due to judicial discretion or limitations on judicial authority (e.g. 7 deadly sins).

#### *Ethnography Data Sample Demographics*

The sample included a total of 439 cases, with 221 in Atlanta and 218 in Philadelphia. The following table presents demographic information for the sample.

Table 3.7: Demographics of Cases for Atlanta and Philadelphia from the Ethnography Data Set

	<b>Atlanta</b> (N = 221)	<b>Philadelphia</b> (N = 218)
<b>Male</b>	84.2%	84.4%
<b>Female</b>	15.8%	15.6%
<b>White (NH)</b>	12.2%	19.7%
<b>Black (NH)</b>	83.7%	71.6%
<b>Hispanic</b>	3.2%	6.9%
<b>Other Ethnicity</b>	1%	1.9%
<b>Age Range</b>	17-65+ <sup>1</sup>	16 – 70

1. Atlanta did not provide the exact ages of the accused, so estimates of individuals' ages were made using age ranges.

In Atlanta, the ethnography data set sample was comparable to the BJS data in regards to the break down for race/ethnicity, gender and age. The sample in Philadelphia also resembled the BJS data in all categories except race. Far more Blacks were included in this sample than were found in the BJS data; however, when the cases where BJS failed to record ethnicity are removed, the percentage of Blacks in the observations (72%) is close to the percentage in the BJS data set (69%).

Table 3.8 provides a breakdown of bail denied versus bail granted in Atlanta and Philadelphia. This table shows a large decrease in the percentage of cases of bail being denied in both cities as compared to the BJS data. According to the ethnography data set, about 1 in 7 individuals in Atlanta were denied bail; this number was 1 in 4 for the BJS data set. The already small percentage of people denied bail in Philadelphia, 4.1% in the BJS data set, decreased to



just over 1 percent in this sample. It is important to note that 9 of the 32 or 28% of the cases denied bail in Atlanta were due to the 7 deadly sins statute. In Philadelphia, all 3 cases denied bail were murder cases and therefore denied due to Rule 520.

Table 3.8: Bail Denied vs. Bail Granted in Atlanta & Philadelphia (Ethnography Data Set)

	<b>Atlanta (N = 207)</b>	<b>Philadelphia (N = 218)</b>
<b>Denied</b>	14.5%	1.4%
<b>Granted</b>	79.2%	98.6%
<b>Other<sup>1</sup></b>	6.3%	0%

1. This category refers to cases that were either missing or fell into one of four categories: 1. the case was dropped by Fulton County Magistrate Judge due to a lack of probable cause, 2. the accused was loaned out to Grady Memorial Hospital in Fulton County, 3. the case had already been indicted, or 4. the accused was loaned out to another city or county jail.

Table 3.9: Non-Financial vs. Financial Bail in Atlanta and Philadelphia (Ethnography Data Set)

	<b>Atlanta</b>	<b>Philadelphia</b>
<b>Non-financial</b>	33.1%	40%
<b>Financial</b>	66.9%	60%
<b>N</b>	175	215

Table 3.9 indicates that while larger percentages of individuals are granted bail in the ethnography data set than in the BJS data set, the breakdown of the types of bonds granted is similar for both data sets. The information provided in Tables 3.8 and 3.9 provide some insight into the changes in this first phase of criminal court procedures in Atlanta and Philadelphia over time. While the first table might indicate that both cities have become less punitive, the second table suggests that this may not be the case. The decrease in percentage of individuals denied bail from the BJS data to the ethnography data may be attributed to the increase in the jail population resulting in overcrowding. The federal decrees regarding this issue originating in 2006 in Atlanta and twenty years earlier in 1986 in Philadelphia now impact the likelihood that a magistrate judge will deny bail in a case in which they have judicial authority to grant it. Both cities face substantial fines when their jails are overpopulated, meaning judges may be more likely to grant bail, a topic which will be examined later in interviews with the courtroom workgroup.

Table 3.10 describes the percentages of people who were denied bail, broken down by gender and race. The overall percentage of those having bail denied decreased from the BJS data for all cases except Hispanics in Atlanta, which may be explained by a small sample size. This decrease provides further support for the idea that both cities are reducing the percentages of bonds denied due to overcrowding. Excluding the small sample of Hispanics in Atlanta, Blacks and males were far more likely to have their bonds denied, similar to what we see in the BJS data set.

Table 3.10: Bail Denied vs. Bail Granted in Atlanta and Philadelphia by Gender and Race  
(Ethnography Data Set)

	<b>Atlanta</b>		<b>Philadelphia</b>	
	<b>Bail Denied</b>	<b>Bail Granted</b>	<b>Bail Denied</b>	<b>Bail Granted</b>
<b>Male (n = 174, 184)</b>	16.7%	83.3%	1.6%	98.4%
<b>Female (n = 33, 43)</b>	9.1%	90.9%	0%	100%
<b>White (n = 27, 43)</b>	7.4%	92.6%	0%	100%
<b>Black (n = 172, 156)</b>	15.1%	84.9%	1.9%	98.1%
<b>Hispanic (n = 7, 15)</b>	42.9%	57.1%	0%	100%

Table 3.11: Non-Financial vs. Financial Bail in Atlanta and Philadelphia by Gender and Race  
(Ethnography Data Set)

	<b>Atlanta</b>		<b>Philadelphia</b>	
	<b>Non-Financial</b>	<b>Financial</b>	<b>Non-Financial</b>	<b>Financial</b>
<b>Male (n = 145, 181)</b>	26.9%	73.1%	37.6%	62.4%
<b>Female (n = 30, 34)</b>	63.3%	36.7%	52.9%	47.1%
<b>White (n = 25, 43)</b>	40.0%	60.0%	48.8%	51.2%
<b>Black (n = 146, 153)</b>	32.2%	67.8%	41.2%	58.8%
<b>Hispanic (n = 4, 15)</b>	25.0%	75.0%	6.7%	93.3%

Table 3.11 describes the percentages of non-financial and financial bail by gender and race. When compared to the BJS data, this sample demonstrates a general increasing trend in the percentage of people who received non-financial bonds across most categories.

### **Summary**

As previously noted this section of my dissertation offered insight on the impact of both extra-legal and legal variables on bail decisions within and between Atlanta and Philadelphia across the two samples. In Atlanta, the accused are denied bail more frequently, a statistic which is impacted by race. Black people in that city were the least likely to be granted bail. However, this is not true for Philadelphia, where we see bail being granted at very high rates and race having little to no impact. Once gender is included in the discussion, men are denied bail at much higher rates than women in Atlanta but not in Philadelphia. Overall, when comparing the two cities, both men and women in Atlanta are denied bail much more often than men and women in Philadelphia.

The argument may be made that it would be better to be arrested in Philadelphia from the information provided by these two data sets. Across all variables, people in Philadelphia were more likely to be granted bail and have that bail be non-financial than in Atlanta. However, this analysis only scratches the surface of the factors which influence bail recommendations and decisions in both cities. The following chapters will provide a more thorough examination of what else may be impacting this first phase of the criminal court procedure.

## **Chapter 4**

### **QUALITATIVE METHODS**

When looking at the outcomes of a criminal court system, it made sense to look at bail outcomes – how and why are these outcomes derived and to whom are they attributed. For example, the previous chapter explained how quantitative analysis was used to examine the impact of legal and extra-legal variables on bail decisions. The results (descriptives, frequencies, and regression analyses) indicated that race, gender and age have an impact on bail decisions, as does having a criminal justice history at the time of arrest. However, these factors do not explain how and why these outcomes were derived, how the bail system operates, or how the judiciary may affect such outcomes. Qualitative methods were needed to address these questions, in addition to complementing and/or confirming the findings of the quantitative analysis. Complementary data allow researchers to use data from one source to compensate for the weakness in another source (Brewer & Hunter, 1989, 2006; Scrimshaw, 1990; Smalls, 2011). The qualitative methods employed for this study included observations, in-depth interviews, informal interviews, open and axial coding, and content analysis. One of the most difficult challenges in conducting this type of research is gaining access to courtrooms and jails, as well as the research subjects themselves, which will be outlined in forthcoming sections for each city.

## Atlanta

### *Gaining Access/Social Capital*

Knowing the usual difficulty of gaining access to courtrooms to conduct ethnographies, I recognized that my access would require some resourcefulness. I reached out to a contact in the South Carolina judiciary who agreed to assist with my project. He called our undergraduate institution, Wofford College, and requested a list of all the practicing attorneys in Atlanta and Philadelphia, my chosen research locales. We examined this list, which included approximately 500 names, to see whether we recognized anyone that may have been one of our former classmates, teammates, friends or business associates. We were both able to locate and contact several people from the list. I reached out to one of my former classmates, Erica<sup>13</sup>, who works as a civil attorney in Atlanta and she responded to my email with excitement about my project. As a civil attorney, she could not connect me to anyone in the criminal judiciary, so she introduced me to her sorority sister, Nicole, who works as a criminal defense attorney in Atlanta. Once I introduced my research project to her, Nicole informed me that another sorority sister was a Superior Court Judge in Atlanta, Judge Sheila Robinson. Nicole put me in contact with Judge Robinson's office. I gained instant credibility because of Nicole's professional reputation and status but it was their personal relationship as sorority sisters that ensured my access. The judge and her staff offered any and all support I needed to conduct my research.

### *Entry into Fulton County Courthouse*

I conducted both criminal and civil court observations in Judge Robinson's courtroom the first few days in the office. I witnessed a jury selection and the actual trial of a twenty year old

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<sup>13</sup> All individuals involved in the research project have been assigned pseudonyms.

young Black man accused of killing another Black man when they were both seventeen. I also observed jury selection and high-profile civil suits. These days of observation in superior court were necessary to build trust and rapport with the judge and her staff, in addition to learning more about the criminal judiciary of Atlanta. According to Whyte (1984), when conducting this type of research and entry has been gained, “the first requirement is to gain some initial familiarity with the local scene and establish a social base from which we can continue our exploration until we are able to study some parts of that territory systematically” (p. 35).

Judge Robinson’s staff members assisted in making introductions to other courtroom workgroup members, getting legal documents printed, and brainstorming ideas to assist me with my project. I would often hear the ladies say, “Who would be a good person for Brian to talk to?” For example, the judicial assistant kept me informed of the court schedule and the judge’s schedule, as well as introduced me to prospective research subjects. She also assisted with any administrative issues that I may have encountered, such as providing me with a map of the courthouse and making sure I had space in one of the offices to work. The judge’s legal staff assisted with locating, explaining and providing statutes, codes, legislation, and any legal documents related to bail in the state of Georgia. The bailiff assigned to Judge Robinson’s court also assisted with my research, ensuring my entry into the building by personally walking me downstairs to introduce me to his colleagues (security at the front door) as “Judge Robinson’s Intern.” He also granted me approval to bring in my digital recorders (usually not allowed in the courthouse) to record the interviews with the research subjects, as well as offering input on “who would be good for Brian to talk to.”

Each day I was responsible for checking in with the case manager, Tiffany, so that Judge Robinson and her staff could make sure of my whereabouts. Tiffany has worked in the Fulton

County judicial system for almost 20 years and served as my major contact and the most vital person in managing the networks for my research project. Because of her lengthy career in the criminal court system in Atlanta, she had access to a wealth of resources in addition to a wealth of knowledge about the criminal justice system, which proved invaluable to me during my research process.

I was there to accomplish two goals: (1) to conduct courtroom observations and (2) to recruit subjects that are involved in the bail process that could provide me with interviews about their roles in the bail procedures. Although I carried the label of “intern” of a well-respected Atlanta judge, I had to use my personal skill set to recruit volunteers to participate in the study. The ability to talk to anyone and make them feel comfortable about giving you what you want is somewhat of a gift. Many academics suggested that I just conduct observations, saying, “I don’t think anyone in the judiciary will talk to you.” However, I used my upbringing as the major method of gaining trust and building rapport with the folks in the courtroom. I know that the first sign of a good education is good manners. Being raised in the South and being taught to “respect your elders” can go a long way, especially when trying to convince strangers that are swamped with their jobs, family, and their own set of personal issues that they have at least 45 minutes to talk to you about their role in bail operations. I used my bright smile as a segue way into the courtroom.

#### *Fulton County Detention Center*

The first court appearance (after someone gets arrested) in Atlanta takes place in the same building as the jail, at the Fulton County Detention Center. Tiffany contacted a former co-worker



to assist me in gaining access to Fulton County Detention Center. This individual, Patricia, was responsible for overseeing bail proceedings at the jail and become my gatekeeper there.

On the day of my initial meeting with Patricia, I arrive at the 901 Rice Street jail at approximately 9 a.m. As I enter the building, I first notice the Black female police officer sitting in front of the metal detectors and scanners, behind glass double doors. She does not want to engage in conversation; she only wants to know where I am trying to go. When I inform her that I am Judge Robinson's intern, she responds, "Oh so you name dropping?" Her attitude leads me to assume that she feels extreme strain and pressure from her job and does not want any added aggravation from me. I humbly respond, "No ma'am, just providing information for you to direct me to the right place." At this moment, she gives me an eye and neck roll and points me to the front desk staff person. She instructs me to remain in the single file line and put everything I have on the belt. As I walk through the metal detector and pick up my belongings on the other side, I see immediately to my right are bathrooms, pay phones and a large digital sign that reads, "Welcome to Fulton County Jail." I cannot help but notice on the left of the metal detectors, the lobby area filled with 10-15 Black men and women (majority women), waiting impatiently for someone to tell them when court will begin. The cinder block walls behind them are painted a pale beige color with no pictures, paintings or postings. The security desk to which the first officer pointed me is right in front of me as I walk further into the lobby of the jail. At this desk, staffed by a Black female security officer, identifications are swapped out for visitor passes and a sign-in book requires your name and destination and the time. To the right of this desk is a window that accepts payments for bonds as well as handles inmate accounts. Outside of this window is a machine owned by Swanson Company that is called the Cobra Cashier where loved ones can put "money on the books" for the inmates. This machine allows someone to access the

name and jail account of an incarcerated individual and place money in the account to be used at the jail's commissary. As I approach the front security desk, the officer says, "Put your stuff in that locker and take a seat." I inform her that I am an intern from Judge Sheila Robinson's office and I am there to see Patricia Armstrong. She asks for my identification, hands me a green badge with the words "Courtroom A" on it and tells me to wait right here. My badge is different from the visitor's badge given to those waiting in the lobby. She then picks up the phone and notifies Patricia that I am in the lobby. Patricia walks right out, introduces herself, tells the clerk, "I got him," and walks me to the courtroom, where she introduces me to the bailiffs, clerk of court personnel and her co-workers. Patricia serves as a representative from the Public Defender's office and every day before First Appearance begins, she meets with those individuals who have been arrested on bench warrants for previously failing to appear for court. On this particular day, she meets with 6 Black men ranging in age from 21 to 45, and 4 Black women, 3 middle aged or older and one who looks very young. She calls each person to her desk one by one and inquires about why they missed court, in addition to contacting their attorneys to see if they will appear in court for First Appearance. She looks up demographic information on each person using a computer system to verify address, date of the last court hearing appearance, and criminal history. She urges them to "handle their business" and informs them that it's their responsibility to update the court if their address changes. She stresses that the magistrates are hard on people who miss court, so they should come up with an excuse better than, "I didn't get no letter." These individuals are dealt with before First Appearance begins, given new court dates and returned to jail. While Patricia is meeting with the bench warrant crowd, the 2 Black male sheriff's officers are watching television, getting the playoff updates on the National Football League. During this time, a female correctional officer (C.O.) ushers in two women, 1 white and

1 Black, handcuffed together with shackled feet, directing them to sit in the first pew. The sheriff's officers continue to watch TV, but their leisure time does not last long because approximately 10 minutes later (10:45 a.m.) they must assist a Black male correctional officer with the handling of 1 white and 14 Black men who are handcuffed in pairs, with shackles on their feet and are placed in the hallway that leads to the courtroom, in preparation for the 11 o'clock bail hearings. Three other Black sheriff's officers (2 women and 1 man) enter the courtroom through an adjacent door and take a seat at the table in front of the magistrate's bench. The atmosphere changes from a quiet and relaxed environment to more of a loud and tense environment due to the C.O.s transitioning from watching TV to controlling the courtroom. The male accused are brought from the hallway into the courtroom by sheriff's officers as the clock moves closer to 11 a.m. They sit in the pews and wait for the proceedings to begin. The frustrated expressions on their faces lead one to believe that they are not feeling too good about their current situation and their chances of being released by the magistrate as First Appearance begins.

## **Philadelphia**

### *Gaining Access/Social Capital*

Gaining access to the courtroom workgroup in Philadelphia did not go as smoothly as it did in Atlanta; the process began with a contact made at the University of Delaware (U.D.). The department of Sociology and Criminal Justice at U.D. hosts an annual graduate student recruitment weekend, where they bring in prospective students to tour the campus, learn about the graduate program, the faculty, and etcetera. The program includes a chance for prospective students to meet with current graduate students who may have similar interests to share with

them regarding the experience, lifestyle and culture of graduate school. A request was made by the graduate director for criminology students to stop by the departmental conference room to speak with a prospective student who was unable to attend the recruitment weekend. The prospective student mentioned to me that she worked as a public defender for the Philadelphia Public Defender's Association. After I informed her of my project, she provided her contact information to me and volunteered to introduce me to a public defender, Dana, who she thought could be of great assistance. Dana and I communicated for over a year by email before finally meeting. She agreed to introduce me to the major players in the field, and serve as my contact person for Philadelphia on the project.

#### *Entry into Philadelphia Criminal Justice Center*

I met Dana in her office at the Public Defender's Association. I see a Black gentleman sitting at a very small desk as I enter the building. He does not appear to be interested in small talk so I refrain from introducing myself. He instructs me to sign in and take the elevator to the 4<sup>th</sup> floor. I follow his instruction, get on the elevator and get off at the public defender's office. I step off the elevator directly into the offices. There is no sign identifying the office, but there is one that reads, "All bond reimbursements must be filed by your attorney." I find this to be very odd but informative. I approach the window under the sign, eager to state my reasons for being there. I am instructed to sign in and take a seat with approximately 20 others waiting in the lobby before I can even open my mouth. Again, I follow instructions but also send Dana a text message, informing her that I am in the lobby and approximately 3 minutes later she arrives. She takes me upstairs to her office, which is very small and shared with 2 male public defenders. We engage in small talk for a few minutes and she informs me that we are going to the Criminal Justice Center (courthouse) for our meeting with the judge.

The Criminal Justice Center is located approximately 2 miles from her office so we take a walk. On the way, we talk about why she is a public defender and why I, a former bail bondsman, decided to leave that profession to earn a doctorate degree. The conversation is interesting enough that it lasts the duration of the walk. I notice the large number of people moving rapidly as if they are in a hurry as we enter the large double doors of the courthouse. We begin to pick up our pace and make our way to the metal detectors. Two Black male officers are engaging in conversation as Dana walks calmly through. I on the other hand have to take my belongings out of my pocket, remove my laptop from its bag and patiently wait for clearance. When this is done, we get on the elevator and head to the judge's chambers. Once we arrive, we sign in and wait to be escorted in. Dana introduces me to the legal assistant for the top municipal court judge in the city of Philadelphia, Judge Amy Graves, as we enter the judge's chambers. Although Dana had a meeting scheduled, it does not appear that the judge is fully aware of the purpose of the meeting making it necessary for Dana and the legal assistant to meet privately with her before I am brought in. This process takes longer than anticipated, but the public defender and the legal assistant finally persuade the judge to agree to meet with me.

Judge Graves informs me that she is very skeptical about allowing people in her courtrooms, simply because "every time somebody does research on Philadelphia, we always seem to do something wrong." Philadelphia, unlike Atlanta, has been a focal point of research for many scholars for a long time. I can sense the frustration in her voice as well as sense her protectiveness for the city of Philadelphia's criminal court system and its actors. Judge Graves informs me that I can only interview 1 magistrate judge (I requested 4), but I have her permission to observe other magistrates' bail hearings without formal interviews. She also does not allow me to record interviews with the magistrate or pretrial services. Needless to say, this was a

significant limitation in data collection for Philadelphia. I adjusted by taking shorthand. In general, this interview structure required more time. Subjects in most instances were patient and understanding. Overall, the meeting lasts 30 minutes.

Once the municipal court judge grants permission, the legal assistant and I begin to discuss the scheduled bail hearings. She informs me that Magistrate Cole Timmons (the magistrate I am allowed to interview) is not on the bench today but I can take a trip to see where the courtroom is located. The public defender gives me a small tour of the courthouse, which includes a trip to the basement, where bail hearings are conducted. I wait for the judge's legal assistant to contact me with a schedule for courtroom observations. At this point, I am ready to begin conducting research. I introduce myself and my project to as many courtroom actors as I possibly can, with the hope of recruiting them for interviews although Dana has offered her network.

### **Research Design**

As mentioned in the previous chapter, the data from the Bureau of Justice Statistics offered insight on who was granted bail and who was not granted bail. Yet, I suspected that there is much more going on with bail decisions than just legal and extra-legal variables therefore I decided upon triangulation as a means to investigate bail operational procedures in Atlanta and Philadelphia. I already had the preliminary quantitative analysis; now I wanted to observe the court proceedings and interview the courtroom workgroup members to determine how the qualitative data would complement the quantitative results.

Table 4.1: Research Design

Quantitative						
BJS Data Set	<ul style="list-style-type: none"><li>• State court processing statistics</li><li>• Collected even years from 1990-2004, during the month of May</li></ul>					
Ethnography Data Set	<ul style="list-style-type: none"><li>• One month in each location</li><li>• Atlanta – Courtroom, Pretrial, Bail Bondsman Office, Clerk of Court</li><li>• Philadelphia – Courtroom, Pretrial</li><li>• Extra-legal and Legal Variables</li><li>• Created data set from field notes and court documents</li></ul>					
Qualitative						
Atlanta Interviews Total – 21	3 Magistrates	3 Assistant District Attorneys	4 Private Defense Attorneys	4 Public Defenders	2 Pretrial Service Reps.	2 Clerk of Court Reps.
	2 Bail Bondsmen	Sheriff’s Dept. Rep.				
Philadelphia Interviews Total – 11	1 Magistrate	2 Assistant District Attorneys	4 Private Defense Attorneys	2 Public Defenders	2 Pretrial Service Reps.	

Ethnography “enables the field worker to place individuals in a group context and gain a realistic picture of the dynamics of individual and group behavior” (Whyte, 1984, p.6). To conduct my ethnography, I spent at least one month in each locale as an observer of bail operational procedures taking extensive field notes and collecting court documents. Due to the different bail structures in each locale more time was needed to capture Atlanta’s organizational structure; therefore I conducted more observations of agencies in Atlanta than in Philadelphia. I collected data as an ethnographer in the courtroom, with the pretrial services agency, with bail bondsmen/women, and in the clerk of court’s office in Atlanta (See Table 4.1). Ethnographic

data collection was limited in Philadelphia to the courtroom and pretrial services agency. Each individual agency serves a particular role in bail operations in its respective jurisdictions, which will be discussed more thoroughly in the following chapters. The observations were done to get a more extensive understanding of the process of bail setting.

### *Ethnography Data*

Field observations from the extensive courtroom ethnography were organized and used to create a data set in Microsoft Excel. The observations, completed in magistrate courts in Atlanta and Philadelphia, were separated into cases by individual bond decisions. Several variables including date and location of the hearing, race and gender of the magistrate making the bond decision, the legal and extra-legal variables associated with the accused, as well as the bond type and amount granted were recorded for each case. I used the BJS data set as a guide for legal and extra-legal variable definitions. Legal variables included name of the offense(s) and criminal justice history. Extra-legal variables included race, gender, age, marital status, residential stability, and etcetera. Additional variables were created to capture the actual processes by which bond recommendations and decisions are made. These variables or inside influences, such as the presence of support in the courtroom for the accused; interaction between the magistrate and the accused; bond recommendations from the state, defense counsel and Pretrial Services; and time taken to issue the bond decision, are defined in more depth in the discussions of the next two chapters. A section for detailed comments was also included which provides descriptions of the alleged criminal acts (facts of the case), the accused's appearance, and any conversations that took place between the courtroom workgroup, the accused and/or family or friends present as supporters. After all cases had been input into the Excel file, a copy was made to be exported to SPSS. In the copy, each discrete variable was coded using numeric scales, all units of



measurement were standardized within variables, and several variables were deconstructed or coded using ranges to allow for more precise statistical analysis. The statistical analyses of this data were presented in Chapter Three.

#### *Individual Interview Sub-Sample(s)*

The subjects in the qualitative sample include the courtroom workgroup members, as well as individuals who work outside of the courtroom in bail operations. Table 4.1 outlines the interview sample. As mentioned earlier, some of the subjects came from the networks of both judges and the judges' staff in Atlanta and Philadelphia. I was also able to recruit subjects through personally introducing my project to individuals I met during my time in the courtroom and jailhouse. I was very careful to show a great deal of respect for their role in the criminal court system as well as the personal time they offered to my study. Most often after introductions, I would be handed a card and instructed to "call me later." I have over 40 cards from assistant district attorneys, public defenders and private counsel whom I contacted via telephone and email. To accommodate the schedules of my subjects, I had to be willing to drive 30 minutes north of Atlanta on a Saturday morning at 7 a.m. to interview a private defense attorney; I had to be willing to sit in Bojangles and pray that the audio would pick up on the recorded interview over the loud staff and customers arguing over their food prices; I had to be willing to park my truck and catch the bus in North Philadelphia just to get downtown to conduct an interview, because I did not have the funds to pay for a parking space in the city. There was a great deal of chasing people down to get them to commit to an interview, but I was able to include more than 30 subjects in my study.

In-depth qualitative interviews were conducted with each individual. Interview guides were created based on the perceived roles of the courtroom workgroup actors in bail operations. Questions pertained to how the individuals in the study conceptualized their roles in bail operations in their respective locale, as well as their opinions of and experiences with the bail system. For example, when creating the interview guide for judges, questions were asked pertaining to how decisions on bail were made, whereas the assistant district attorneys and public defenders questions pertained more to recommendations made for the bail decision. Interviews ranged anywhere from 30 minutes to an hour and 30 minutes. In Atlanta, all interviews were audio recorded; in Philadelphia, only the interviews with the magistrate and pretrial service representatives were not recorded. The interviews were conducted in judges' chambers, assistant district attorneys' offices, public defenders' offices, private defenders' offices, Clerk of Court offices, bail bondsperson's office, restaurants, the cafeteria of the courthouse and the jail.

### *Data Coding Process*

I used ethnographic data, content analysis and open coding to generate codes for this project. Each coding session took approximately 2.5 hours. Cleaned transcripts of each interview were coded with a color scheme relative to each code. After highlighting each passage relative to each code, that passage was then placed in a word document coinciding with the code. For example, all passages relative to age were highlighted in the same color, and then copied onto a separate word document for the code "Age." Also included in each word document was the title of the interviewee that made the comment.

Four domains were developed for this project: (1) Legal Variables, (2) Extra-Legal Variables, (3) Courtroom Workgroup, and (4) Organized Environment. A number of codes were

generated for each domain. Five codes were generated for the legal variable domain, which include: (1) Criminal Justice History, (2) Name of the Offense (3) Facts of the Case, (4) Sentencing Guidelines, and (5) Statutes and Legislation. Also, a set of four sub-codes emerged from the larger code Criminal Justice History: (1) involved in the criminal justice history at time of arrest, i.e. probation or parole, (2) recidivist (previous convictions), (3) open criminal cases, and (4) history of failure to appear in court. Five codes were generated for the second domain, Extra-Legal Variables, which include: (1) Age, (2) Race, (3) Gender, (4) Socioeconomic Status, and (5) Community Ties. The third domain, Courtroom Workgroup, generated seven codes which include: (1) Magistrate Judges, (2) (Assistant) District Attorneys, (3) Public Defenders, (4) Pretrial Services, (5) Private Defense Attorneys, (6) Sheriff's Office, and (7) Clerk of Court. The last domain, Organized Environment generated two codes, Inside Influences and Outside Influences. Six sub-codes were generated from the Inside Influences code, which include: (1) Information, (2) Interaction, (3) Negotiation, (4) Recommendations, (5) Time and (6) Support. Five sub-codes were generated from the Outside Influence code, which include: (1) Media, (2) Overcrowding, (3) Political Pressure, (4) Bail Bondsman, and (5) Bail Revenue. Using grounded theory (Glaser and Strauss, 1967) as a framework, other codes emerged as a result of the analyses, which include: (1) Purpose of Bail and (2) Strength of Case/Likelihood of Conviction. (See Table 4.2). The results of these analyses will be discussed in the chapters titled "Bail in Atlanta" and "Bail in Philadelphia."

Table 4.2 Qualitative Analysis Coding Scheme

Domains	Codes	Sub-Codes
Legal Variables	Criminal Justice History	Involved in the Criminal Justice System at the Time of Arrest
		Recidivist
		Open Criminal Cases
		History of Failures to Appear
	Name of the Offense	
	Facts of the Case	
	Sentencing Guidelines	
	Statutes and Legislation	
	Strength of Case/Likelihood of Conviction	
Extra-Legal Variables	Age	
	Race	
	Gender	
	Socioeconomic Status	
	Community Ties	
Courtroom Workgroup	Magistrate Judges	
	(Assistant) District Attorneys	
	Public Defenders	
	Pretrial Services	
	Private Defense Attorneys	
	Sheriff's Office	
	Clerk of Court	

Table 4.2 Qualitative Analysis Coding Scheme continued

Domains	Codes	Sub-Codes
Organized Environment	Inside Influences	Information
		Interaction
		Negotiation
		Recommendations
		Time
		Support
	Outside Influences	Media
		Overcrowding
		Political Pressure
		Bail Bondsmen
		Bail Revenue
	Purpose of Bail	

## **Chapter 5**

### **BAIL IN ATLANTA**

Bail recommendations and decisions in Atlanta are influenced by a number of factors. This city's system is more punitive than that of Philadelphia, denying bail more frequently and issuing fewer non-financial bonds. In addition, Atlanta's bail structure is traditional and most of the courtroom workgroup members claim that their system strictly follows the rule of law. This chapter will examine Atlanta's structure as well as the factors involved in bail recommendations and decisions, using ethnographic field observations of bail proceedings and interviews with courtroom workgroup members and other participants in the bail process. Previous research on bail has tended to focus on differential outcomes related to extra-legal factors, arguing that poor people and/or racial minorities disproportionately receive harsher treatment. Other analysts argue that bail outcomes reflect the arrested individual's criminal justice records or legal variables. Traditional explanations are oversimplified and ignore the various pressures of the actors in the bail system. Instead, it is crucial to understand the social organization of bail that shapes these outcomes. I will consider the courtroom workgroup and the criminal procedures used in Atlanta before discussing what takes place at the first appearance of the criminal court system. Understanding these procedures and the role played by each actor is critical to examining the processes and factors associated with bail.

#### **Criminal Procedure in Atlanta**

The bail process begins with an arrest; those accused of committing a crime are apprehended and taken to the centralized holding facility at 901 Rice Street in Atlanta, Georgia.

At the jail, these individuals go through the booking process. This is where demographic information, fingerprints and photographs (a.k.a. mug shots) are taken upon entry to the jail. Demographic information is recorded on a “booking sheet,” that includes spaces for name, race, gender, address and phone number, place of birth, occupation and employer’s contact information, marital status, number of children, monthly income, whether a pretrial interview was conducted, type of offense (i.e. misdemeanor or felony), and whether the person can afford an attorney.

An assessment is completed by pretrial services to determine the accused’s eligibility for the pretrial program at this point. However, some people fall through the cracks and are not interviewed even though the pretrial services office operates 24 hours a day, 7 days a week. According to the Deputy Director of the Fulton County Pretrial Services Intake Unit, the assessment serves two purposes: (1) identify those who can be recommended for release on a non-financial bond; and (2) determine what pretrial may do to reduce the jail population. Pretrial services, which effectively functions as an informational hub in Atlanta, investigates and verifies all of the accused’s ties to the community, as well as collects information regarding the accused’s residence, marital status and number of children, employment, education, references, mental condition, and if applicable, substance abuse/treatment history and screening. The bail decision by the magistrate may be impacted if pretrial services is unable to verify any of the accused’s information.

Also, the Intake Unit is responsible for conducting an extensive review of criminal history including prior arrests and dispositions, past failures to appear, and any other reports related to the criminal history of the accused. This information is used to assess the risk of flight, danger to the community and needs of the accused, and will ultimately determine the release

recommendation, known as the Bond Assessment Report, provided to the public defender's (P.D.) office, district attorney's (D.A.) office and magistrate by pretrial services. In addition, the accused completes an application to determine whether he or she qualifies to be represented by the public defender's office. Decisions regarding eligibility for public defender services are based on the poverty index for the state of Georgia; the individual qualifies for P.D. representation if he makes less than \$1,500 per month.

After booking, the arresting officer completes a police report, also known as the incident report, which provides a detailed summary of the facts of the event leading to the arrest. This report, in conjunction with the booking sheet, is forwarded to the District Attorney's office, located at the central court house in the downtown Atlanta area. This particular branch of the D.A.'s office in Atlanta is known as the complaint room. Once the packet of information arrives from the sheriff's office, the district attorney's office compiles a complaint based on the police report. The complaint room affords the D.A.'s office the opportunity and responsibility to decide whether to move forward with a case – essentially *making the case*. Once the decision to prosecute is made, an employee of the complaint room cross-references the “pull sheet,” which lists all the accused currently in jail, with the complaints sent over by the sheriff's office. A file is then created consisting of the police report, the complaint, the witness and victim statements, the warrant and other legal documents; the legal documents must be signed by the arresting officer and notarized. If any components of the file are missing or if the documents are not signed and notarized, the magistrate may dismiss the case at the first appearance hearing.

These files and the Bond Assessment Report are transferred by courier to the clerk of court's office at the jail at 7 a.m. to be placed on the 11 a.m. docket for First Appearance. In Atlanta, First Appearance court is held 7 days a week at 11 a.m. The files are made available to



the magistrates, public defenders and assistant district attorneys upon their arrival at 9 a.m. to be reviewed so that they may have an idea of what their docket looks like for the day. This branch of the clerk of court's office is responsible for initiating cases – basically getting them ready for court, by assigning case numbers and developing the calendar (i.e. lists of the accused on the docket) for First Appearance by using the files from the complaint room in the district attorney's office. The cases at this point in the process are now ready for court or First Appearance in Atlanta.

### **First Appearance**

The purpose of bail hearings generally is to ensure the appearance of the accused in court by setting a bond. Two things must take place prior to setting bond in First Appearance in Atlanta: (1) establishing probable cause for the arrest; and (2) determining if the accused qualifies for a public defender and if so, appointing one. Probable cause is established in one of two ways: (1) having a signed and notarized warrant from the arresting officer; or (2) the appearance and testimony of the arresting officer at the hearing. As mentioned previously, if this does not happen, the magistrate may dismiss the case. After probable cause has been established and defense counsel has been determined, the magistrate makes a bond decision.

#### *Types of Bonds*

Overall, bonds fall into one of three categories – denied, financial and non-financial. Bonds are denied because of bail restrictions in statutes or due to the discretion of the magistrate judge. As noted in Chapter 3, financial bonds are those that require either money or property be posted to secure the appearance of the accused at the next court hearing. There are several types of bonds within this category, including surety bonds, deposit or 10% bonds, full cash bonds and

property bonds. A surety bond, known as a “straight bond” in Atlanta, most commonly requires the services of a bail bondsman, but may also be met by posting property or cash in the full amount of the bond. Ten percent bonds require the accused to post 10% of the full amount of the bond. Cash bonds require the accused to pay in full the total amount of the bond. Property bonds require property valued at at least the full amount of the bond to be posted.

Also previously mentioned in Chapter 3, non-financial bonds do not require money or property to secure release. The types of non-financial bonds are (1) release on recognizance (ROR), (2) unsecured bond, and (3) conditional release. On ROR bonds, the accused signs an agreement to show up for court. Unsecured bonds or sign own bonds (SOB), have a dollar value attached for which the accused is liable if they fail to appear in court. Conditional release bonds require the accused to follow a set of conditions set by the magistrate, which are most often supervised by pretrial services and may be attached to an unsecured bond.

### *Courtroom Workgroup*

In addition to understanding the structure of First Appearance, it is important to identify the individuals involved at this phase of the criminal court system. There are a number of actors involved in First Appearance, whom I refer to as the courtroom workgroup, each with a particular role in the process, including the magistrate, assistant district attorney, public defender, pretrial service representative, clerk of court representatives, and sheriff’s officers. Their roles are best described by explaining what actually takes place during the bail hearing.

Court begins at 11:18 a.m. on my first day of First Appearance observations. Filling the 4 rows of pews in the middle of the courtroom are the accused, 1 white woman and 1 Black woman sitting in the first pew, and 1 white and 14 Black men, occupying the other three rows.

They all appear to be between eighteen and twenty-five. In Fulton County, the accused are referred to as “positions” listed on the court calendar for the day. The dark wooden pews are not full, but only 15 male positions are allowed to be in the courtroom at any given time. The accused are wearing blue cotton pants and matching blue short sleeve V-neck shirts, which appear to be cheaper versions of the popular Dickies® gear. Their gear, known as “county blues,” is marked with “FULTON COUNTY” in white letters on the back of the shirts. They are wearing cheap thin shower sandals; only some are wearing socks, even though it is January. The male positions are brought in from a door at the back right of the courtroom, while the females enter from a door at the front right of the room. Along the wall from the back door are chairs that are usually occupied by private defense attorneys and interpreters. This is also where I sat during some of my observations. Directly behind the positions is the gallery, separated from the courtroom by a glass partition. The gallery is reserved for the family members and friends of the accused. On this day, the 4 pews of the gallery are about half full of Black females.

A Black male representative from pretrial services sits at a table in front of the accused. Pretrial services is the first to address the court during First Appearance. According to the Deputy Director of Pretrial Services Intake, this representative is responsible for providing a 3 to 5 minute presentation of information on the accused, including criminal justice history and community ties. This information is then used by all other courtroom workgroup members to make bail recommendations. Ultimately, pretrial services makes a determination about the eligibility of the accused for their program. If the individual is eligible, pretrial services makes a recommendation that the accused be granted a conditional release.

To the right of the pretrial services representative at the same table are the public defenders; on this day there were three, two Black women and a white man from the Conflict

division of the P.D.'s office<sup>14</sup>. After the magistrate establishes probable cause for the arrest, the public defender informs the court whether the accused qualifies for P.D. services. If so, the P.D. assigns the accused counsel to represent the individual in all future court appearances. The P.D.'s office is responsible for representing everyone who does not already have a private attorney during First Appearance, regardless of whether the person is indigent. When the accused has already hired private defense counsel and the attorney is present in the courtroom, these cases are handled first. When there is no private defense counsel, the public defender addresses the court after the state gives its bail recommendations. The more aggressive public defenders may argue that the arrest was not justified to get the case dismissed if there are any concerns with the validity of the probable cause at this time; if this is not an issue, the public defender gives a bail recommendation.

A Black female legal assistant from the district attorney's office is sitting beside the public defenders. The legal assistant's primary responsibility is to provide administrative support to the A.D.A.s in the courtroom. A white male assistant district attorney sits to the far right at this table. According to the Chief Senior Assistant District Attorney, the most important role of the D.A.'s office is to protect the citizens of Fulton County by "preserving the rights, pleasure, leisure, comfort, [and] property of all citizens from any harm." The District Attorney's office is also responsible for ensuring that "each arrest meets a constitutional muster" and that the rights of the accused have been preserved during this initial phase of criminal procedure. As it relates to First Appearance, the more specific role of the assistant district attorney is to appoint state counsel for this hearing, to make certain that the proper charges have been brought against the

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<sup>14</sup> The Conflict Division of the Public Defender's office is involved in representing individuals who are accused of Class A felonies (i.e. more serious offenses, such as murder). Also they provide legal representation for co-defendants for B felony cases (i.e. less serious offenses, such as theft).

accused and make recommendations for an appropriate bail that will secure the individual's appearance at the next court date. Typically the state addresses the court after the representative from pretrial services provides the accused's information and eligibility for the program.

A Black female representative from the clerk of court's office sits to the left of the table at a small desk covered with stacks of manila files and a computer that faces the attorneys. This representative is responsible for transcribing by hand everything that happens in court. Another Black female clerk sits to the right of the magistrate, close enough to him to pass documents; this desk also has a computer and several stacks of files. This representative completes the First Appearance forms, filling in the name of the accused, type and amount of the bond, and other details related to the case. In addition, this representative completes the Bond Order, which includes the accused's name, case number, date of arrest, charges, and court date, and provides this document to the magistrate to be used to record and sign the bond. On a given day, either of the individuals from the clerk's office may pass out the day's calendar created collaboratively to the other courtroom actors. Everyone in the courtroom is dressed in business attire (e.g. suits and ties for the men and pant suits or skirts for the women).

The magistrate, a white man named William Tate<sup>15</sup>, sits in front of a computer on a raised bench in the center of the courtroom, in front of the state seal of Georgia. When he enters the courtroom no one stands, unlike what happens in Superior Court. He is wearing slacks, a white dress shirt, and a red and blue tie. According to Judge Tate, the magistrate's primary responsibility during First Appearance is to, "assess the facts of the case and the criminal history of the defendant as to whether or not it's appropriate to grant bond and if so how much." In Fulton County, there are full- and part-time magistrates, who are required to have a Juris

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<sup>15</sup> All names used are pseudonyms.

Doctorate (J.D.). Full-time magistrates are appointed by the State Court of Fulton County and part-time magistrates are selected by the Chief Judge of the State Court.

On this day (and every other day of observation with this magistrate), I sat on the bench to the right of Judge Tate<sup>16</sup>, able to see the computer screen that lists little other than the day's docket. There is a rack of judge's robes, an American flag, and a bookshelf filled with law books along the front left wall of the courtroom. Surprisingly, the robes on the rack are never worn except when someone from the media is present. Sheriff's officers stand guard at the three doors entering the courtroom – one at the back right for the male positions, one at the top right for the female positions and other court personnel, and one at the back left for family, friends, and other observers to enter either the courtroom or the gallery. There are no windows and nothing on the plain beige walls, except the Georgia seal and a single television on the wall above the gallery partition. The room is moderately warm and there is a slight smell of mildew.

Judge Tate introduces himself and advises the accused of their constitutional right to remain silent and their right to an attorney. Pointing to the public defenders and then to the other courtroom actors, he says, "There are 3 public defenders in the courtroom. Everyone else works for the government." He continues saying, "The people sitting next to you in the blue uniform are C.I.s [confidential informants] trying to get a reduced sentence. I advise you to be quiet." Announcements are then made by a sheriff's officer regarding those on the calendar not present in the courtroom. Often those not present are in Grady Memorial Hospital or have been loaned out to other facilities to be housed due to the overcrowding of Fulton County Detention Center. These announcements were handled by the same Black female sheriff's officer each of the days I

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<sup>16</sup> Although they are technically magistrate court judges, they are addressed simply as "Judge" in Atlanta.

observed. There are between four and six sheriff's officers in the court during First Appearance on any given day.

### **Variables Used in Bail Recommendations and Decisions**

According to the courtroom workgroup in Atlanta, the most integral component of bail decisions is what is commonly referred to as the Ayala case. This 1993 decision set precedent on standards for determining whether to grant release in First Appearance (*Ayala v. The State*, 1993). A magistrate may release the accused if the court determines the following: “(1) the accused poses no significant risk of fleeing from the jurisdiction of the court or failing to appear in court when required; (2) poses no significant threat or danger to any person, to the community, or to any property in the community; (3) poses no significant risk of committing any felony pending trial; and (4) poses no significant risk of intimidating witness or otherwise obstructing the administration of justice” (OCGA§17-6-1, 1993). Although many of the courtroom workgroup members cited Ayala as the primary guide for making bail recommendations and decisions, this research demonstrates that other legal, inside and outside influences, as well as extra-legal variables impact these processes in significant ways.

#### *Legal Variables*

Legal variables refer to those elements of a case directly related to the criminal justice system. These factors, including statutes, name of the offense, facts of the case, sentencing guidelines, and criminal justice history, directly impact bail recommendations and decisions. In both Atlanta and Philadelphia, statutes play a major role in the bail systems as they limit the judicial authority of the magistrate in making decisions on bail in certain circumstances. In Atlanta, after an arrest is made, the law requires that the accused be taken before a neutral

magistrate within 48 hours if arrested without a warrant and within 72 if arrested with a warrant. If this does not happen, the accused must be released on a sign own bond (SOB) or the charges must be dismissed, regardless of the offense. According to what is commonly referred to as the Riverside<sup>17</sup> case, “a jurisdiction that chooses to combine probable cause determinations with other pretrial proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest” (OCGA§17-6-1, 1993). Failing to do so is a violation of due process and a deprivation rights. At this phase, the Riverside statute is immensely important because bail recommendations and decisions are not made if the accused is not brought before the court within this time frame.

Another statute that has an impact on bail decisions, commonly known as the “7 deadly sins,” makes certain offenses non-bailable by a magistrate court judge. These offenses include treason, murder, rape, aggravated sodomy, armed robbery, aggravated child molestation and aggravated sexual battery. Bond for individuals accused of one of these offenses may only be granted by a superior court judge two weeks after the First Appearance hearing (OCGA§17-6-1, 1993). Again, bail recommendations and decisions are predicated on the criteria outlined in the statute. Essentially, if Riverside is violated or the individual is accused of a 7 deadly sins offense, all other factors related to bail are immaterial as the magistrate is prevented from making a decision on bail.

After assessing a case on the basis of the criteria set forth by these statutes, one of the first legal variables used at this phase is the name of the offense(s) of which the individual is accused. The magistrate lists the charges that have been filed against the individual after stating the position and name of the accused. This information is one of the most important components

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<sup>17</sup> *County of Riverside v. McLaughlin, et al.* Decided May 13, 1991.



of bail recommendations and decisions as evidenced by the responses of the courtroom workgroup members. The name of the offense provides the starting point for bail recommendations and decisions. According to a white male magistrate, this variable corresponds to an amount on a bond schedule which provides a baseline number in making bail decisions. The other actors share this sentiment noting that they are aware that magistrates use the bond schedule in making decisions, so their recommendations also begin with the name of the offense.

When a baseline for bail recommendations and decisions has been established using the name of the offense, all other legal variables are used to either increase or decrease the bond amount. The facts of the case, or how the crime was actually committed goes hand in hand with the name of the offense. Although the facts of the case are not read aloud in First Appearance, all courtroom workgroup members have access to the facts in the police report. Most of the courtroom workgroup members indicate that facts of the case impact their bail recommendations and decisions. The magnitude of the act and crimes against protected groups, such as children and the elderly or protected citizens, such as firefighters and police, could increase the bail amount. On the other hand, when the facts of the case are less severe in nature, there is a possibility that the bond recommendations and decisions may be reduced. The impact of name of the offense and facts of the case on bail recommendations is explained by a white male assistant district attorney who says:

...I see...aggravated assault, it gives me a number...to start with. Before I read any of the facts of the case, it gives me a number. If I see say, residential burglary, I start out at \$25,000. If it's a residential burglary where it's an abandoned house, there's, no one was home and nobody was hurt, and the guy was compliant, it goes down. If it's a residential burglary where somebody was home and they, you know, they held somebody there and took their stuff, then it goes up.

This individual underscores the idea that the name of the offense serves as a baseline, providing a dollar value starting point from which bail may increase or decrease depending on the facts of the case. According to this A.D.A., these two variables work successively to produce an initial bail amount.

Sentencing guidelines also impact recommendations and decisions made at this phase of the criminal court system. This impact is seen most frequently among recidivists who, because of their criminal history, are facing mandatory minimum prison terms. These long sentences may increase the potential flight risk of the accused, making higher bail a means to secure the appearance of the individual in court, as well as protect the community from recidivists. The impact of sentencing guidelines was cited by a number of courtroom workgroup members, most notably by representatives of the district attorney's office.

The most important of the legal variables in Atlanta is the criminal history of the accused, including previous arrests, previous convictions, past failures to appear and criminal justice status at the time of the arrest (i.e. open cases, probation or parole) at both the local and state level. Essentially, the more extensive the criminal history of the accused, the higher the likelihood that the bond will be increased based on this information. The Deputy Director of Pretrial Services Intake notes that this process is predicated upon the old adage that past behaviors predict future responses. Conversely, people with no criminal history who commit non-violent offenses are more likely to be granted non-financial bond or participate in pretrial services. Although key to understanding bail recommendations and decisions, legal variables are only one component of these processes. These variables work in conjunction with a number of factors occurring inside and outside the courtroom which will be examined in the forthcoming sections.

### *Inside Influences*

A number of factors occur inside the courtroom and impact bail recommendations and decisions, including information, support, negotiation, interaction and time. These variables termed *inside influences* have been largely neglected in the bail literature. Nevertheless they play a significant role in shaping bail outcomes in Atlanta. The courtroom workgroup members are granted access to certain information, including name of the offense, facts of the case and criminal justice history before bail recommendations are made. However, in Atlanta, none of this information is discussed in open court. In fact, the magistrates state explicitly that they do not include this information when making bail decisions. The D.A.'s office also claims to use no personal information about the accused when making bail recommendations. One Black male assistant district attorney says, "We have the criminal history, we have the information from the officers involved in the initial arrest, I mean that's all we need." As the actors, particularly the judiciary, involved in Atlanta's bail system claim to strictly adhere to standards based on the "rule of law," their use of information about the accused is less significant at this phase. This factor impacts outcomes for the accused in that these individuals are not issued bonds based on a holistic picture, but rather primarily based on legal criteria.

Understanding the impact of support for the accused being present in the courtroom has not been undertaken in research on bail systems. All courtroom actors in this study indicate that support has a positive impact on bail recommendations and decisions. One public defender underscores this point saying:

But you see people who take off work, who come down, you know, use gas money. You know, go through the security check point, wait in court for two hours 'til they get to them. That shows something, you see that support in the back. Ya know, it just speaks volumes and sometimes you can see the demeanor of the judge 'cause [of] the charges but you gotta humanize them. And sometimes when you're talking about bond hearing,

you show that you can actually see the demeanor...the glare in their eye kind of softening and you're convincing them that this person can be trusted.

According to this public defender, having support in the courtroom provides an opportunity for the accused to be humanized in the eyes of the magistrate. He believes that the fact that someone cares to show up in court to support a loved one in First Appearance indicates to the magistrate that the accused may be trusted, which has a positive impact on the bail decision. The sentiment among courtroom workgroup members is that if a loved one takes the time to come to First Appearance, the magistrate is more likely to believe that there is a support system to encourage the accused to return for their future court dates. The accused had support present in one in five cases during my observations in Atlanta. On occasion, the magistrate would even engage in conversations with the support, posing questions about whether that individual would make sure the accused returned to court and stayed out of trouble. Here it was clear that support did in fact have a favorable influence on the magistrates' decision making process.

In relation to the processes of this phase of the criminal court system, negotiation refers to the defense and state making recommendations and engaging in legal discourse. In Atlanta, negotiation impacts bail decisions as magistrates at the very least consider the arguments presented by both defense counsel (most often public defenders) and A.D.A.s. In First Appearance, both defense counsel and A.D.A.s may present arguments regarding the probable cause for arrest, and type and amount of bond. For example, the defense may call into question the merits of the arrest or case with the hopes of having the case dismissed or having the bond lowered in what appears to be a weak case or one that the state will have a hard time proving at trial. Conversely, the state may argue that the accused poses a serious danger to the community and should be held without bail. In Atlanta, negotiation occurred in more than 41% of cases.

An additional inside influence is interaction between the accused and both the magistrate and defense counsel (public defenders or private defense attorneys). Unlike negotiation, interaction does not generally occur in First Appearance as there is very little opportunity for the accused to speak, occurring in less than 10% of cases. Prior to the bond hearing, the interaction with defense counsel is essentially non-existent because the accused are brought before the magistrate within 48 hours. Once in the courtroom, the accused are still unable to interact with the public defender because P.D.s typically arrive only 5 to 10 minutes before the start of court, leaving no time to meet. Individuals who have hired private defense counsel may have some time to interact with their attorneys before the start of court; however, their time will be limited as well. The accused are very rarely permitted to address the judge, as the judiciary and defense counsel believe that the accused is likely to do more harm than good to their case if they are permitted to speak in court. One public defender quotes a magistrate judge who informs the accused that they “have a right to shut up,” implying that the judge is uninterested in anything the accused may have to say. This lack of interaction is significant in the bail process because the accused are not given the opportunity to assist in their representation, quite possibly hindering their defense counsel’s ability to secure reasonable bond.

The bail process in First Appearance is largely influenced by the limited time available for making bail recommendations and decisions. Thorough preparation is virtually impossible as courtroom members do not have access to complete files until approximately 9:15 a.m., leaving only 1 hour and 45 minutes to review 60 to 100 cases on the docket for that day. A magistrate underscores this point saying, “The problem is in Fulton County on a heavy day we got enough cases that a defense attorney cannot make an in-depth analysis in a timely manner. I can’t make that in-depth analysis, but I can make a superficial one.” Atlanta’s First Appearance system is

structured for efficiency or moving cases through very quickly. In fact, I found that the average time spent making bond decisions was 2 minutes and 48 seconds, with some cases taking as little as 30 seconds to decide. When decisions are being made that quickly, there is no time to review relevant information, provide adequate representation or allow the accused to interact and speak on their own behalf.

### *Outside Influences*

Similar to the inside influences, outside influences including overcrowding, media, political pressure, bail bondsmen, and bail revenue have not received adequate attention in the bail literature. However, unlike the first two sets of variables (legal and inside influences), there is not a general consensus among the courtroom workgroup members regarding whether the variables in this section actually impact bail recommendations and decisions.

Overcrowding is a major issue in Atlanta's jail system. Although the city reported a decline over the last three years in jail population, it still ranked among the nation's 50 largest jail populations in 2010 (Minton, 2012). In 2006, a United States District Judge signed a federal consent decree ordering the Fulton County Sheriff to address the overpopulation issue in the Fulton County jail and maintain a jail population that does not exceed its capacity.

Consequences range from fines to the federal government taking control of the facility if the order is violated. As of April 2011, Atlanta had 2,948 people in a jail that has a capacity of 2,688 people. Of this population, 67% (1,986) are awaiting trial, meaning they have been before a magistrate judge and their bail was either denied or a financial bail was set that they have not been able to pay (Office of Research, 2011). Atlanta now frequently "outsources" inmates to other local detention facilities. In an interview with the *Atlanta Journal-Constitution*, a judge adamantly expressed his thoughts on the issue, "For years, the number of inmates has exceeded

the number of available beds at the Rice Street facility. Rather than addressing this problem head-on, the sheriff has opted to spend millions of dollars housing inmates at other jails” (Cook, 2009). To many of the criminal judiciary, outsourcing is not an adequate solution to Atlanta’s overcrowding issue as it costs the taxpayers a great deal of money. In 2009, Fulton County budgeted \$12 million to outsource inmates (Cook, 2009). A U.S. Federal District Court Judge wrote:

The outsourcing of inmates is not a viable solution to the population problem. It is unfair to the taxpayers of Fulton County, who are required to pay the exorbitant costs of outsourcing because their elected officials have failed to plan for adequate jail space...It is the sheriff’s obligation, as the elected official directly responsible for jail, to take the lead in attacking this problem. (Cook, 2009)

It is clear that overcrowding is a major issue in the city of Atlanta; however, there is much less consensus regarding the impact that this issue has on bail recommendations and decisions. Presumably, overcrowding may encourage the judiciary to be more lenient in bail decisions in order to reduce the jail population. Nonetheless, many courtroom workgroup members expressed adamantly that overcrowding did not have an effect on bail outcomes. In discussing the impact overcrowding has at this first phase of criminal court in Atlanta, one magistrate offered:

Fulton County jail is overcrowded...they’re under federal court supervision to relieve the overcrowding...I have in the past applied for higher up positions as a judge. Obviously I haven’t gotten them. That’s why I’m still sitting here talking to you...but the judicial nominating committee will bring this up in the course of their interview as to whether or not the overcrowding at the jail is something that I consider in setting bonds and the answer is no I don’t. That’s not my problem. If a person is a dangerous individual that doesn’t deserve to be out on the streets, I’m not giving them a bond and I don’t care how crowded the jail is. But to say that it’s not a factor that’s present in your mind is, is a fantasy. Of course it is and the jail is constantly trying to remind you of that...when I walk into the clerk’s office to sit down at the desk and read the case files that they’ve conveniently left a report that tells me how many beds are available today... and I don’t even look at it...I turn it over. I slide it aside...but to say that there isn’t a cognitive presence of that would be a mistake... and at least in part is one of the reasons that 1/10th of 1 gram of cocaine is gonna get a minimal bond. We don’t need to be taking bed space

with that person. I've got somebody charged with aggravated assault for shooting at someone that deserves that bed... so the bottom line is yes and no.

This magistrate judge admits that overcrowding is indeed an area of concern but insists it is not a factor that he includes in decisions on bail. This magistrate does not feel obligated to fix the overcrowding issue from the bench; he does not think that is his job. He does not feel responsible to save the taxpayers' money by using the "bed count" as a tool to decide whether those that come before his court are worth the financial drain on the taxpayer. Nonetheless, this magistrate admits that his refusal to even look at the jail report has most certainly impeded his ability to be promoted. He admits that the issue is "present in his mind" but denies that it impacts his overall decision.

The magistrate's perspective is supported by that of the sheriff's office, the formal office in charge of the jail. Similar to the sentiments offered by the magistrate, the sheriff's officer believes that overcrowding has no influence in bail outcomes. A Black male sheriff officer of Fulton County offered his sentiments on overcrowding impacting bail decisions:

I don't think that [overcrowding] impacts the judge's decision. I think the judge's decision is based on the rule of law. I don't think it is based off of capacity. Reason being, judges don't work for Fulton County. Judges work for the state... They are actually placed in Fulton County. 'Cause...any judge in this building, he is not employed by Fulton County, so he has no direct tie to Fulton County. He's basically sitting in a seat in Fulton County. Superior Court judges are either elected or appointed by the Governor. Um, state court judges the same thing. They are really not impacted by our numbers. If we're [Fulton County jail] at max, then we're just at max...

This sheriff's officer indicates that overcrowding is an issue only for the jail and not the judiciary as magistrates are not employed by Fulton County and therefore are not subject to their goals.

However, this officers comments contradict those made previously by the magistrate who believes that he has been overlooked for promotion because he does not include overcrowding in his decision making process. Nonetheless, according to both of these individuals, the courtroom



workgroup members do not allow overcrowding to influence bail recommendations and decisions overall. These sentiments underscore the commitment of Atlanta's courtroom workgroup to staying true to the rule of law, not allowing the influence of outside variables to impact bail outcomes.

Nevertheless, overcrowding is a major talking point in the media, which in turn contributes to pressure felt by the courtroom workgroup when making decisions on bail, as media and political pressure impact bail outcomes as additional outside influences. A 2010 article in the *Atlanta Journal-Constitution* provides an example. Journalists Steve Visser and Bill Rankin write, "An overcrowded court docket and an overcrowded jail forces prosecutors to cut favorable deals and judges to allow for lenient bonds, stressing the system to the point that even career criminals such as [Oshea Wright<sup>18</sup>] tagged as flight risks are allowed to leave jail on their signature without putting up any money, lawyers said." Wright was charged with illegally entering an automobile, possession of cocaine, and obstructing a law enforcement officer, and released on a signature bond after he was held for more than 48 hours without appearing before a magistrate, a violation of the Riverside statute. Wright was no stranger to the criminal court system with 18 previous arrests including illegal gun possession, drug offenses, forgery, and the use of multiple aliases; he was also serving 5 years of probation in a neighboring county for forgery. However, none of Wright's criminal justice history mattered because the court violated the Riverside statute. As a result, he was released on a sign own bond. This case gained media attention when two weeks after his release, Wright was charged with murdering a Georgia state trooper. The media immediately attacked the criminal court system, often insinuating that the judiciary of Atlanta was not properly handling bail cases. Wright's criminal history should have voided his eligibility for a signature bond; however, the magistrate had no choice but to release

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<sup>18</sup> The name of the individual referred to in this article has been changed.

Wright on a signature bond or dismiss the case altogether because of the Riverside statute. Nevertheless the media chose to ignore the limitations on the magistrate's judicial authority and presented a sensationalized version of this story, creating a public outcry against the criminal court system.

The media adds to the pressure felt by magistrates appointed by superior court judges to make decisions in the best interest of their position. For this reason, the media is a source of discontent among the criminal judiciary. One magistrate says:

I was described as a bleeding-heart liberal who put career criminals on the streets [in the newspaper]... I will say that irritated the shit out of me... Particularly to be called a bleeding-heart liberal having been a conservative for longer than most people can know there were conservatives...

This magistrate is particularly annoyed with the media and the ways they have portrayed his decision making. He is upset that situations in which his judicial authority was limited by legislation have been described as liberal, when in fact he prides himself on his conservative values. Although this magistrate and none of the other courtroom workgroup members admit that the media impacts bail recommendations and decisions, it is clear that they are aware and thinking about what will be said about them and Fulton County's criminal court system.

Overall, overcrowding and media work with other influences to create political pressure on the courtroom workgroup members as they make bail decisions and recommendations in Atlanta. However, there are mixed feelings on the impact political pressure has at this phase. Many subjects claimed to feel no pressure themselves, but believed that other courtroom workgroup members do. A Black male private defense attorney in the Atlanta area felt that decisions made by the district attorney's office are often influenced by political pressure:

... most of the times from their [district attorney's] perspective they're gonna have pressure politically, meaning ya know we can't be seen as soft on crime. And that my worst fear is that if I sent somebody out on bond and they commit a new offense, then I'm gonna get in trouble. And we have [Oshea Wright] who recently had a couple of

cases and he's accused of killing an officer. And they like, "look, if he had gone to jail or somebody didn't let him out." So now it's tough to get bond. But I still go on every case and say, "hey my matter is not [Oshea Wright]"...

This attorney states explicitly that the Wright case and the subsequent political pressure created by the media had an impact on bail recommendations. He believes that A.D.A.s must make sure to not appear "soft on crime" or to appear to have enabled an individual to be released to commit new offenses. Subsequently, the pressure felt by the state's office impedes this attorney's ability to secure bond for his clients.

Yet the district attorney's office claims to not allow political pressure to impact their bond recommendations. A Black male assistant district attorney offers his perspective, "I would be a failure as a public servant if I worried about politics. I'm not a politician... [Laughs]." This assistant district attorney does not feel his office succumbs to political pressure when making recommendations on bail. One of his colleagues (a white male district attorney) also chimed in on why political pressure has no place in the district attorney's office:

Do I feel any political pressure? No. I think honestly I'm pretty good and I try to train the other folks too to just focus on the case. You know, not what you recommended in the last case...I don't tell them even to think about necessarily what I would want. You know, I trust their judgment in the moment to make the best, umm, decision.

According to this A.D.A., political pressure simply does not impact his role as counsel for the state. In addition, he attempts to make certain that those he trains do not allow political pressure to impact their recommendations on bail. In fact, he does not want those underneath him to even consider what he would want when making bail recommendations. Instead, he prefers that they rely solely on their own judgment, ignoring any outside influences.

Many courtroom workgroup members felt that pressure was particularly significant for the decision making process of magistrates. However, when evaluating the impact of political

pressure on their own decision making, magistrates often stated that the pressure was in fact there, but did not have a major influence on their decisions. A white male magistrate says:

Yes, but very rarely, very rarely...we get an individual in there and then you hear little tid-bits around you going, oh this person's related to so and so, this person's related to so and so and you're like okay? Is so and so here? (Laughs)... And then you look at the offense and you look how egregious it is and then you make your decision. It's not the over-riding factor. I mean if someone is related to say the Governor of Georgia, I'm not gonna say that okay I'm gonna give this person a signature bond because of that connection...

This magistrate focuses on the familial relationships of the accused when contemplating whether political pressure impacts his decisions on bail. He speaks of this influence lightly and with humor, without indicating that he actually feels a great deal of pressure. Specifically, he believes that although he may be aware of certain pressures related to the dynamics created when the accused is a member of a high powered family, he does not allow that to override his personal judgment when making decisions on bail. Another magistrate indicates that political pressure plays a more salient role in his decision making process, without actually admitting that this influence impacts his decisions. Although this magistrate acknowledges that political pressure causes him to question whether he is overcompensating in his decisions, he ultimately believes that he is able to "get it out of his mind" to make the right decision on bail. He says:

...having that [political pressure] in the back of your mind and thinking that you might be influenced is disturbing. And then you start getting into the balancing of am I overcompensating for the threat...is this the right bond? And finally you just have to get it out of your mind and say screw it. And say I'm doing what I do because it's the right thing to do.

The political pressure felt by magistrates was evident during my observations in Fulton County. On several occasions the magistrates would cite the Wright case in court when setting more punitive bonds, stating things such as, "You're [the accused] not gonna have my name in the newspaper." Overall, these first three outside variables – overcrowding, media and political

pressure – demonstrate that the courtroom workgroup is not isolated from social and political influences when making bail recommendations and decisions.

In addition, it was important to examine whether bail bondsmen impact bond recommendations and decisions made by the courtroom workgroup because they have such a major role in bail operations in Atlanta. Bail bondsmen are private companies that provide legal financing to those accused of committing criminal acts that do not have the money to pay for their “freedom.” There are approximately 50 bonding companies competing to offer their services to the indigent population in Atlanta. One Black male bondsman in Atlanta described his role saying, “I think [my role is] mostly helping people because I feel as though that everybody that goes to jail is not a criminal...and being able to give a person back their freedom is what I, you know that’s what I get out of it. Trying to help someone get their freedom back.” To this individual, bail bonding is essentially providing a service to the community in helping the accused secure their freedom.

Bail bondsmen participate in the bail process by writing surety bonds through a “power of attorney” system. In bail bonding, a power of attorney is a legal document authorizing private bail bonding companies to pay for the release of the accused without paying actual cash. The documents vary between bonding companies, but for the most part they include the bonding company’s name, the name of the accused, the county where the bond is written, the dollar amount needed for the bond, serial numbers for tracking and record keeping, the accused’s charges, as well as the next court appearance date, time and location. This document is accepted by the jail as payment and held in the court file. It is important to note that no money is actually transferred from the bonding company to the jail, only a financial power of attorney. This power of attorney is a contract by which the bonding company promises to produce the accused on any

court dates affiliated with the bond and promises to pay the full amount of the bond if the person absconds from justice.

Bail bondsmen have a significant impact on bail operations in Atlanta because many people in jail awaiting trial cannot afford to post bond. Surety bonds provide a chance for those who are unable to post 10% or cash bond to be released from jail. Magistrates and other courtroom workgroup members are aware that for many poor people, a surety bond may be the only way they are able to attain their release. Therefore, surety bonds present the magistrate with an opportunity to make pretrial release accessible for the indigent population. The bond options available to magistrates are reduced without the availability of bondsmen. Bail bondsmen are the poor man's financier as they are often willing to accept less than the amount necessary for their release. They are open to making payment arrangements and working with those unable to secure the full amount. For example, bondsmen may take half of the money up front, and allow the accused to make weekly payments for the remainder of the amount due. In Atlanta, surety bonds accounted for nearly 90% of the financial bonds issued in the ethnography data set, demonstrating that bondsmen are an integral component of the bail structure.

Bail bondsmen are also important to this phase of the criminal court process as they provide an additional guarantee that the accused will appear in court. The bondsman is a responsible third party who is liable if the accused fails to appear in court. For this reason, magistrates may be more comfortable granting bonds which they know will be secured by someone other than the accused. A Black male from the sheriff's office had the following to say when discussing the impact bail bondsmen have on the current structure of bail operations:

I think it's [current bail structure] excellent. I think it gives you a choice. Every jurisdiction does not give the choices. [In] Fulton County, an indigent person with a misdemeanor is not penalized because they are indigent... We have bonding companies

who you can pay a certain percentage to if you have neither cash nor property. So there, I think it's a great system because it's based off of choice and that choice regardless [of] whether you are the poorest person or the richest person. You can still come into this judicial system and actually have a fair chance at getting out [chuckles], regardless of your economic status.

This officer underscores the fact that bondsmen provide an option for the indigent population to secure their release. According to this individual, the availability of this and other options for pretrial release make Fulton County's bail system "excellent." A female magistrate court judge explains the importance of bondsmen in this system, saying:

In a nutshell, I think that bail or bonding companies are vital to the process, alright. We have a system where we could keep people packed in like sardines... In a building paid by tax dollars and... we are keeping people in, where in the eyes of the law, they're presumed innocent until proven guilty. So, bonding companies sort of give some meat to that doctrine... that person would never have that opportunity if there was no bonding company to play that role... So they are a vital part of that process.

This magistrate states explicitly that bonding companies provide a vital service in ensuring that the jails do not become crowded with individuals who are supposed to be "presumed innocent until proven guilty." She implies that without bonding companies, many indigent individuals might not have the resources to secure their release. Although bail bondsmen are frequently viewed by some courtroom workgroup members as detrimental to the bail structure, bondsmen nonetheless are valued by many courtroom workgroup members given their impact contributes to the overall efficient functioning of the bail operational system in Fulton County.

Revenue generated from bail is also important to understanding bail processes. In Atlanta, both bondsmen and the jail profit in the bail system. Atlanta has 3 types of bonds that involve cash: 10% bond, cash bond and surety or straight bond. As an example, on a *10% bond* of \$1,000, the following would be required of the accused to secure release: (1) ten percent of the bond amount to be held by the jail to guarantee appearance in court - \$100; (2) processing fee of one percent of the bond - \$10; (3) a standard fee of \$100 for bonds of \$1,000 or less - \$100;

totaling \$210. Of this amount, only the ten percent of the bond amount held by the jail is returned if the accused shows up for court (in this example, \$100), with the processing and standard fess being retained by the jail as bail revenue (in this example, \$110). In the case of a *cash bail*, the accused is required to pay dollar for dollar the total bond amount granted by the magistrate to the jail to secure his release. For a \$1,000 cash bond, the following would be required of the accused to secure release: (1) total amount of bond granted paid to jail to guarantee appearance in court - \$1,000; (2) processing fee of ten percent of the amount of the bond, \$100; totaling \$1,100. Of the \$1,100 paid, \$1,000 would be returned to the accused upon his return to court. In the case of a *surety bond* of \$10,000, there are three options for the accused to secure release. In option one, the following would be required of the accused to secure his release: (1) \$10,000 cash paid to the jail to guarantee appearance in court; (2) processing fee of ten percent of the bond amount paid to the jail - \$1,000; (3) standard fee of \$200 on bonds of more than \$1,000; totaling \$11,200. Option two would require the following: (1) turn over the deed to property that is free and clear of a mortgage, with equity equal to or greater than the bond amount; (2) processing fee of one percent of the bond amount - \$100; (3) standard fee of \$200; totaling \$300 in cash, in addition to the posting of the property. Upon appearing in court, the property deed would be returned to the accused and the fees are retained by the jail as revenue. However, it is atypical for most accused to select either of the first two options due to low socioeconomic status and lack of property. The accused are more likely to utilize the services of bail bondsmen, who provide a third and most widely used option for securing release under surety bonds. In the case of a \$10,000 surety bond, the bail bondsman calculates the amount required from the accused in the following way: (1) the total bond amount is used as the base - \$10,000; (2) the ten percent required of the bondsman by the jail is added - \$1,000; (3) processing fee of one percent of the bond amount required by the



jail is added - \$100; (4) standard fee of \$200 for bonds higher than \$1,000 is added; totaling \$11,300. This amount is used by the bondsman to calculate the typical 12% fee required by the bondsman of the accused, which in this example equals \$1,356. The bondsman then signs for the accused's bond and pays the court its processing and standard fees of \$300, retaining \$1,056 as profit. To clarify, option 1 requires \$11,200, of which \$10,000 is returned upon adjudication of the case, ultimately costing the accused \$1,200; option 2 requires \$10,000 worth of property be posted and costs \$300; and option 3 requires \$1,356, none of which is returned to the accused. Even though the use of the bail bondsmen costs the most in the end, the other two options are realistically unavailable for most people due to a lack of financial resources. In addition, bondsmen are willing to offer credit, allowing the indigent to make payment arrangements. Understanding these processes will be important in comparing this system to that of Philadelphia which does not utilize bondsmen.

#### *Extra-Legal Variables*

This group of variables refers to all those factors associated with the accused which are not a part of the criminal justice system, including community ties, socioeconomic status, age, gender, and race. Although community ties, race and gender have received a great deal of attention in the bail literature, there has been little discussion of the impact of the intersectionality of these variables on bail recommendations and decisions. These variables form a complex dynamic which contribute to the marginalization of poor young Black men even at this phase of the criminal court system.

Community ties refers to residential stability (i.e. whether the individual lives in the area and for how long), employment status, marital status and number of children, and other attachments to the community. In theory, community ties help reduce the risk of flight of the

accused. In Atlanta, this information is collected by pretrial services and distributed to the courtroom workgroup members, who use it to make recommendations on bail. One public defender points to the importance of community ties in making recommendations, saying:

...we look at the person's ties to the community. ...if this person was born and raised in Atlanta, you know, they're not likely to abscond from this jurisdiction. If it's someone who just moved here from some other state, then, umm, we also look at that... You know whether they're working or you know...whether they have relatives here, whether they have children, wives, everything, whether they have a job. ...those are all important factors that we look at in making a recommendation to the court.

This individual indicates that community ties assist in making decisions about the flight risk of the accused, stating that those from Atlanta are less likely to abscond. In addition, he states that having a family and job in the area are significant in making recommendations on bond.

However, community ties are not discussed in open court and not explicitly used by magistrates in their decisions in Atlanta. Magistrates indicate that community ties are important only in its use by pretrial services to determine if the accused qualifies for their program, which results in a recommendation for a conditional release bond. The most influence community ties has at this phase of the criminal court process is in pretrial services' Bond Assessment Report which indicates whether the program is willing to supervise a conditional release for the accused. Greater ties to the community increase the likelihood that pretrial services will recommend a conditional release for first time non-violent offenders. Community ties are less relevant for those with more extensive criminal justice history.

The remaining four extra-legal variables – race, gender, socioeconomic status and age – provide the foundation for a discussion of the disparities evident in bail recommendations and decisions. Traditionally, scholars have isolated age, socioeconomic status, gender and race as singular variables when discussing their impact on the criminal court process; however, a holistic examination of the dynamic these variables create for the accused is necessary. It is misguided to

look at the accused through any one of these single lenses as it contributes to our limited purview of how these factors influence bail decisions (e.g. BJS data). An individual coming before the court is not just male, Black, young or poor. Instead their lived experiences are a function of all of these variables at the same time. It is for this reason that the qualitative component of my research was vital in understanding how poor young Black men specifically are treated more punitively in bail procedures like in all other phases of the criminal justice system.

Black men accounted for 85% (n=187) of the ethnography sample in Atlanta (N=221); 58% (n=108) of the sample was young Black men under the age of thirty-two. Eighty-three percent of these men (n=155) qualified for public defender representation, indicating that they made less than \$1,500 per month. These figures illustrate the disproportionate representation of poor young Black men at this phase of the criminal court system in Atlanta, making it important to examine how the intersectionality of identity acts as a filter through which the impact of other variables is shaped. One essential element of this discussion is what can be understood as the “perceived threat” associated with poor young Black men. The young Black male is perceived as more dangerous, more violent, more criminal (Alexander, 2010; Nunn, 2002). Therefore, in the eyes of the criminal judiciary, young Black males pose a greater risk to the community at all phases of the criminal justice system.

Crimes associated with young Black men typically result in more punitive decisions at all phases of the system when evaluating how certain crimes are perceived in the criminal court system. For example, a Black male public defender refers to the disparities in sentencing guidelines for crack cocaine and powder cocaine when discussing the impact of race on bond decisions. This and similar disparities in sentencing influence bond as an individual facing a long prison term is viewed as a greater flight risk which often increases the bond amount. More young

Black men are charged with drug offenses related to crack than to powder cocaine, which directly impacts their bail outcomes. Because they are viewed as more criminal, crimes associated with them are viewed as more harmful, and their communities are targeted by law enforcement; young Black men are being arrested more and are accumulating more criminal history than their white counterparts. These extensive criminal backgrounds preclude them from participation in pretrial service programs and from being granted non-financial or lower financial bonds. These extensive criminal backgrounds also reify those implicit biases associated with perceived threats for the criminal judiciary; the Black male is believed to be more criminal and his history supports it. A Black male public defender discusses the impact of judges' biases in defining an image of the typical criminal. He says:

As a judge, they try to be objective and ya know, like a robot. But you can't leave your experiences and you know your prejudices sometimes at the door...If you say like a thug, there's an image that comes in your mind. And sometimes when you hear these things, you may think that this is a typical person, "Oh this is a gang banger...this is a street crime." But when you see another person, "Oh this is boys being boys and you're immature."

According to this individual, stereotypes held by magistrates, as well as their personal experiences greatly impact this phase of the criminal court process. He believes that it is impossible to be objective or "like a robot," meaning that biases held will ultimately impact the way the magistrate views the accused depending on race and gender. Subsequently, the criminal judiciary makes explicit value judgments about who deserves to be kept in jail and who deserves to be let out. A Black female public defender underscores this point saying:

If it's a young white woman, they're thinking you don't belong here, you're in the wrong place...white boys, you don't belong here honey. I've heard judges say to them, "Look, you don't wanna stay here and be up on the seventh floor [most dangerous section of Fulton County Detention Center]."

This public defender adamantly believes that magistrates make explicit judgments based on the race of the accused. She indicates that members of the judiciary do not believe young whites

belong in the criminal justice system, presumably in contrast to young Blacks who do. These biases and judgments are based on a white, middle-class value system. Subsequently, recommendations and decisions at this phase are organized around these cultural standards. A white male magistrate illustrates this point:

I'm more likely to release a young person into the custody of their parents when I see that the parents are middle-class individuals. [From] a good neighborhood where there's likely to be some home values and that mom and dad are going to be willing to put their foot down... Now the truth of the matter is that white people are more middle-class in Fulton County than Black people are... So, I don't want race to be a consideration at all, but I do think it's appropriate to consider the, umm (pauses), lifestyle circumstances of the family that's involved...if they live in a nice neighborhood whether it's Southwest or North suburbs or wherever... That probably means that I'm more lenient statistically to white kids.

This magistrate admits that his bail decisions are probably “more lenient” to white kids; however, he attributes these differences to what he terms “home values” associated with middle-class families. He appears to feel no guilt that his decision making process results in some groups experiencing more punitive bond outcomes than others. This sentiment makes it clear that race and class are significant to decisions on bail. Overall, these examples provide an opportunity to understand how the perceived threat associated with poor young Black men shapes the impact that legal variables have on bond outcomes. Outside influence variables also contribute to disproportionate bail outcomes as a result of the perceived threat associated with poor young Black men. The case of Oshea Wright personifies the media's contribution to the reinforcement of the perceived threat in Atlanta. Wright, a 260 lb. Black man, had his picture constantly flashed on the television and in the newspaper, juxtaposed to the picture of the white State Trooper he was accused of murdering. His image was used to create fear that the criminal judiciary was not protecting the community from dangerous “career criminals” like Wright. The media's coverage of Wright's case illustrates the construction of the image of the dangerous young Black man,

again reifying the perceived threat associated with this population. This case is significant when discussing bail outcomes because the political pressure associated with this case made magistrates afraid to be the one to release a dangerous criminal like Wright back onto the streets. It is unlikely that the criminal judiciary would be able to completely separate the image of Oshea Wright from the faces of the young Black men before them when making decisions about bond.

Inside influences evoke an interesting conversation when discussing the intersection of race and gender in relation to bond outcomes in Atlanta. The ethnography data set demonstrates that the former actually fared better on measures of support, negotiation, interaction, and time spent making bond decisions when comparing Black men and their white counterparts. (See Table 5.1).

Table 5.1: Comparison of Bail Influences and Outcomes between Black and White Men

	<b>Black Men</b>	<b>White Men</b>
<b>Had Support in Courtroom</b>	21%	10%
<b>Representation Engaged in Negotiation</b>	47%	25%
<b>Interaction with Magistrate</b>	9%	0%
<b>Average Time Spent Making Bond Decisions</b>	2 minutes and 56 seconds	2 minutes and 28 seconds
<b>Average Bond Amount</b>	\$19,147	\$11,100

However, these differences did not translate into better outcomes in relation to bond recommendations and decisions for young Black men. In Atlanta, pretrial services deemed 77% of Black men ineligible to participate in their programs, compared to 63% of their white counterparts. Of the sixteen individuals that the D.A.'s office recommended be held without bond, fourteen were Black men. The actual bail outcomes follow the same patterns. Thirty-seven percent of white men were granted non-financial bonds, whereas only 24% of Black men were able to secure their release with no money or property. For those receiving financial bonds, the average bail amount for Black men in Atlanta was \$19,147 compared to \$11,100 for white men. Only 5% of white men in the sample were denied bond, compared to 15% of Black men. These

figures illustrate the disparities inherent in the organizational structure of Atlanta's bail procedures. Even when better situated in relation to certain variables, poor young Black men still fared worse in bail outcomes. Although the courtroom workgroup in Atlanta was often adamant about adhering to the rule of law set forth in Ayala, it is evident that these criteria do not and cannot exist in a vacuum. Bail recommendations and decisions are in fact a product of legal, inside and outside variables filtered through the intersection of race, gender, age and socioeconomic status.



## **Chapter 6**

### **BAIL IN PHILADELPHIA**

Atlanta's First Appearance structure is more punitive than that of Philadelphia. Specifically, data from my research and the BJS sample (presented in Chapter 3) revealed that fewer individuals were denied bail in Philadelphia than in Atlanta and fewer of the accused as a whole received financial bail in Philadelphia than in Atlanta. Overall, while Philadelphia was less punitive than Atlanta, the former city's bail structure was much more deeply rooted in capitalism. This approach has negative consequences for the accused attempting to secure pretrial release, particularly those who are indigent. This chapter will examine the effect of Philadelphia's bail system by evaluating the influences and variables both inside and outside the courtroom that impact bail recommendations and decisions.

#### **Criminal Procedure in Philadelphia**

The accused is taken to one of seven district holding facilities when an arrest is made within the city limits of Philadelphia. At these locations, the accused's demographic information is collected and they are fingerprinted and photographed, as well as examined by a nurse. The arresting officer produces a brief summary of the facts of the arrest (if there was a warrant for the arrest, it is attached to the summary) which is added to the demographic information, fingerprints and photo to create a file for the electronic Police Arrest Report System (PARS). The PARS file, which is used to track the accused from arrest through adjudication, is sent to both the charging unit of the district attorney's office and pretrial services simultaneously. At the D.A.'s office, paralegals, who are available 24 hours a days, 7 days a week, complete a local, state and federal

criminal background check of the accused. In addition, the D.A.'s office assesses the probable cause for the arrest to determine whether the case should proceed and what charges are appropriate. The D.A. then adds the final charges to the document and may include a bail recommendation – usually either a “good bail” or a “high bail.” According to the Chief of the Charging Unit, these recommendation options in the PARS are essentially the only opportunity the D.A.'s office has to provide the bail commissioner with a recommendation, outside of writing an email or letter to the court, which rarely happens. This D.A. noted that defining what exactly is meant by a “good” or “high” bail is difficult; her best understanding of the former and the latter are that they are both used to recommend that the accused not be released on a non-financial or minimal bail. “Good bail” would be a lower financial bond recommendation than that of “high bail.” The file is then saved to the PARS and the D.A.'s office has finished their portion of the initial criminal procedure.

Also during this time, the accused is interviewed by pretrial services representatives who are licensed social workers via closed circuit television. When the interview begins, the representative reads the accused a perjury statement, which indicates that providing false information can result in being denied bail. This interview produces a profile of the accused that includes name, gender, race, address, possession of a vehicle, employment and income status, military status, educational background, marital status and number of children, as well as whether the accused has any child support obligations. Pretrial also collects information regarding medical history, mental health status, history of substance abuse, personal references for the accused, and locations frequented by the individual. All information provided by the accused is verified by pretrial services to ultimately determine the stability of the accused. Pretrial services must be able to have at least one person verify the accused's address, as well as

requests to contact the accused's employer. Once the interview, which takes 7 to 10 minutes, is complete, the information is saved to the PARS file. Pretrial service representatives typically interview 4 or 5 individuals per shift. Only when the D.A. has finalized the charges and pretrial services has completed the interview does the clerk of court add the individual to the next arraignment calendar. It is important to note that neither the D.A.'s office nor pretrial services is able to view information input by the other agency until the file has been completely processed and sent to the clerk's office. This is done so that pretrial services is not biased against the accused based on their current charges or criminal history during their interview.

After this is done, a recommendation for bail is generated through the PARS using the bail guidelines. The Pew Charitable Trusts describes the guidelines:

Using a formula<sup>19</sup>, PARS weighs this information along with information retrieved from the court system's database on criminal history, history of appearing in court and the current charges. The formula then produces a "score" with a corresponding recommendation that the individual should be released, detained or have a specified amount of bail set. (The Philadelphia Research Initiative, 2010)

An A.D.A. provides a rationale for the purpose of the bail guidelines, saying:

...the purpose of them [the guidelines], obviously, is to, you know, hopefully promote consistency so that bail is set based on identifiable factors as opposed to inappropriate factors. The guidelines as they exist, I think, were sort of done with an eye towards making sure that non-violent low-level offenders were released and that bail wasn't set because you don't want these people who are not dangerous languishing in prison 'cause they can't make a small amount of bail.

According to this A.D.A., the guidelines promote consistency throughout the bail system in Philadelphia, ensuring that inappropriate factors are not included in making decisions on bail.

She further states that the guidelines prevent individuals who have committed non-violent offenses from being detained on minimal bonds that they are unable to secure. However, the bail guideline recommendations are frequently ignored by magistrates setting bail significantly higher

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<sup>19</sup> None of the courtroom workgroup members were able to explain how the computer actually calculates the recommendation or how the formula specifically works.

than what was suggested. One magistrate justifies the frequency of these departures from the recommendations, calling the guidelines outdated, noting that they have not been updated in more than 15 years. He states that the guidelines were created to be followed in approximately 70% of cases; however, they are only followed about 50% of the time. Some issues associated with the use of the guideline recommendations will be discussed in later sections.

Individuals from holding facilities located throughout the city limits “appear” for the first court appearance via closed circuit television in the Criminal Justice Center (CJC) located at 13<sup>th</sup> Street and Filbert Avenue in the Center City section of Philadelphia. In a 24 hour period, there are 6 preliminary arraignment hearings, held by 3 different magistrates working 8 hour “shifts” – 7 a.m. to 3 p.m., 3 p.m. to 11 p.m. and 11 p.m. to 7 a.m. The magistrates typically hold two arraignments per shift and are free to begin their hearings at any time during their shift. The accused are typically brought before a magistrate within 12-16 hours of their arrest. If an individual is not brought before the court within 20-24 hours of their arrest, their file is added to the “hot list” in the PARS, indicating that their case needs to be moved along as soon as possible.

### **Preliminary Arraignment**

During preliminary arraignment hearings in Philadelphia, two things take place: (1) the magistrate determines whether the accused qualifies for a public defender based on the accused’s income reported by pretrial services and a conversation with the accused; and (2) the magistrate sets bail.

#### *Types of Bail*

As in Atlanta, bail decisions in Philadelphia fall into one of three categories – denied, financial and non-financial. Bail is denied because of bail restrictions in statutes or due to the

discretion of the magistrate judge. As previously discussed, financial bail requires either money or property be posted to secure the appearance of the accused at the next court hearing. In Philadelphia, there are two types of bail within this category, including 10% deposit and cash. Ten percent requires the accused to post 10% of the total bail amount in cash or the whole amount in property. This type of bail accounts for 99% of the financial bonds recorded in the ethnography data set in Philadelphia. Cash bails require the accused to post the entire amount of the bail dollar for dollar. It is important to note that unlike Atlanta, Philadelphia does not utilize surety bonds. This is significant because the absence of surety bonds precludes bail bondsmen from operating in this city, leaving the indigent with fewer options for securing their pretrial release and leaving the magistrate with fewer options when determining bail.

Also previously mentioned, non-financial bail does not require money or property to secure release. The types of non-financial bail are (1) release on recognizance (ROR), (2) unsecured bail, and (3) conditional release. RORs require the accused to sign an agreement stating that they promise to appear for their next court date. Unsecured bail or sign own bonds (SOB), have a dollar value attached for which the accused is liable if they fail to appear in court. Conditional release requires the accused to either adhere to a set of conditions determined by the magistrate under the supervision of pretrial services or participate in a substance abuse program.<sup>20</sup>

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<sup>20</sup> In Philadelphia, the substance abuse programs for pretrial release are the Small Amount of Marijuana (SAM) program and the Amphetamine (AMP) Program. Accused are sent to the SAM Program when they are arrested with 30 grams or less of marijuana and to the AMP Program when the accused demonstrates evidence of the use of amphetamines and when they are not involved in the sale or trafficking of the drug.

### *Courtroom Workgroup*

On my first day of observation, I enter the Philadelphia Criminal Justice Center from 13<sup>th</sup> Street at approximately 2 o'clock for my 2:30 p.m. appointment with Arraignment Court Magistrate<sup>21</sup> Michael Lange<sup>22</sup>. Inside the double glass doors, immediately to my left is a glass wall which acts as a window to the happenings on Filbert Street. There is a window sill running the length of this approximately 90 foot wall which countless people are using as a makeshift bench. I immediately notice how busy the lobby area is; at least fifty people are actively moving through this space at any given time. I walk towards the center of the lobby and pass a small desk with a 13 inch television where a Black male security guard sits. I continue past this desk and approach the metal detector staffed by two Black security guards – one man and one woman. The woman asks, “How you doin’?”, to which I respond that “I am fine” and return the question. She asks where I need to go and I inform her that I am headed to bond court. She asks if I have a computer in my bag; I answer, “Yes ma’am.” I am instructed to take everything from my pockets and put it into a bowl next to my bag on the security screener conveyor belt. I comply and walk through the metal detector. On the other side, I take my things from the belt and the female security guard asks if I know where I am going. She gives me directions to the basement of the building where preliminary arraignment hearings are held before I have a chance to reply. I walk straight ahead and down the two sets of stairs to reach the ground level.

The basement is cool as crisp fresh air circulates from the several central air vents. Directly in front of me through double glass doors is a sign that reads, “Pay Bonds Here,” located above a window through which a Black female can be seen moving around an office

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<sup>21</sup> In Philadelphia, the arraignment court magistrate judges, formerly known as bail commissioners, are referred to as “Magistrate,” “Commissioner,” or “Comish” by the courtroom workgroup members.

<sup>22</sup> All names used are pseudonyms.

area. To my left is a pair of mahogany doors with 6 inch square window panes. The ground floor is much calmer than upstairs as no one is around except the Black woman through the “Pay Bonds Here” window. I enter the gallery and to my left and right are 5 rows of wooden pews. The gallery provides seating for loved ones of the accused, as well as police officers waiting for warrants to be signed. Private defense attorneys representing individuals in preliminary arraignment court will also wait in the gallery to be called in by the presiding magistrate; however, it is extremely unlikely that a private defense attorney will actually appear in court in Philadelphia. More often than not, private defense attorneys will participate in these proceedings by submitting recommendations via fax or phone call. On this day, like most during my observations, the gallery is completely empty.

Beyond the rows of pews, approximately five feet into the gallery is a door with a large glass pane. On both sides of the door are partitions – about 3 feet of manila colored wall meets large windows which allow those sitting in the gallery to observe the court. Taped to the windows on both sides of the door are 8x11 inch signs on plain white paper that read, “IF YOU HAVE BENCH WARRANTS YOU ARE IN THE WRONG ROOM. PLEASE GO DOWN THE HALL TO B-04 LOCATED ON THE RIGHTHAND SIDE OF THE HALL.” There are three evenly spaced white speakers screwed to the ceiling, separated by three recessed lighting fixtures providing dim light to the gallery area. The speakers allow those sitting in the gallery to hear the proceedings. I walk through this door and notice a flat screen 36 inch television mounted to a one foot wide area of wall that extends down from the ceiling and runs the width of the courtroom. To the right of the TV is a camera directly facing the door through which I have just entered. Blue trash cans are to my immediate right and left; next to the can on my right is a small table covered with stacks of papers, binder clips, and files labeled “Municipal Court –

Philadelphia County Arraignment Court Report.” A long wooden table is in front of that, reserved for the representatives from the district attorney’s office assigned to preliminary arraignment court on that particular day. There is a computer with a flat screen monitor, files and papers, water bottles and coffee mugs, file trays, a pen holder and a tape dispenser on the table. There is also a microphone on the table that allows the D.A.’s representatives to interact with the accused when necessary by holding down the “on” button. A printer sits on a small desk adjacent to the table. There is a large filing cabinet and a coat rack draped with various articles of clothing along the wall to the right of the table. A large color map of the city of Philadelphia hangs over the filing cabinet.

On this day, a young white male and a Black female sit at the D.A.’s table. The woman wears dark dress pants and a casual blouse; the man is dressed much more informally, sporting khakis and a short-sleeve polo shirt. They appear to be preparing for court as they look through files and view documents on the computer screen. The individuals who appear in preliminary arraignment court for the D.A.’s office are paralegals (i.e. individuals with bachelor’s degrees in any field of study) who are hired as district attorney representatives. These individuals collect paperwork on the accused and print criminal complaints at the D.A.’s office and then follow along with these documents in court as the bail commissioner goes through the docket issuing bail decisions, known as “running the list.” Occasionally the representatives will chime in if the magistrate has overlooked some segment of the criminal justice history of the accused. The representatives rarely participate in the proceedings in any other way, except in infrequent cases when they feel the bail granted was inappropriately low or when they have been instructed by the D.A.’s office to make a particular recommendation in court.



There is a table of similar size in line with the D.A.'s table reserved for representatives from the public defender's office to the left of the aisle. This table is situated next to a small desk for a printer and is covered with the same items found on the D.A.'s table, except that the computer monitor is a much older version of the one used by the D.A. representatives. The P.D.'s representative also has a microphone which is used to speak to the accused when it is turned on. There is a water dispenser along the wall to the left of the P.D.'s table; a corkboard covered with white papers hangs behind this on the manila colored wall. Today an actual attorney for the Defender's Association<sup>23</sup>, a Black male, sits at this table and also appears to be preparing for court. He is dressed much more formally than the rest of the courtroom workgroup in a dark suit and tie. However, on most days the individual at this table is only a representative from the P.D.'s office. Similarly to the D.A.'s representatives, these individuals are often paralegals, and sometimes law students or individuals who have earned their J.D., but have not yet passed the bar. These representatives are also trained to "run the list" and essentially do the same job as the D.A.'s representative.

A small table is placed just before the magistrate's bench at the front of the courtroom on which an older model computer and fax machine sit. The approximately 15 foot long bench is raised about five feet off the ground and made of deeply colored wood. On the wall behind the bench is a Commonwealth of Pennsylvania seal; against the back wall, to the left of the magistrate is a United States flag on a thin pole. At the left end of the bench is a 24 inch flat screen TV stationed on a mount connected to the bench. The bail commissioner has a flat screen computer monitor to his left, a phone and microphone on the bench in front of him, and file baskets to his right. There is a small desk to the magistrate's left, where the clerk of court, a

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<sup>23</sup> The Defender's Associate is the collective of public defenders in Philadelphia.

Black male, sits in front of a flat screen Dell monitor, a printer, a pair of speakers and a 4 inch fan. The man is dressed casually, wearing jeans, a button-down shirt, and sandals. Taped to the desk are instructions for using the PARS. In Philadelphia, the clerk creates the calendar for each preliminary arraignment hearing, schedules times for the magistrate to sign search and arrest warrants, and inputs the bail decision into the PARS.

Commissioner Lange, a white male, informs the courtroom workgroup that the hearing will begin at 3:30 p.m. He is wearing dark slacks, a white shirt, and a plain tie. He has brought a blazer, which he never wears in the courtroom. During my observations with Commissioner Lange, I sit on the bench to his left, between him and the clerk. Fifteen minutes prior to the start of the hearing, the magistrate allows law enforcement officers to bring search and arrest warrants to be signed. In Philadelphia, all magistrate judges sign warrants during their 8 hour shifts. Typically, police officers call the clerk to find out what time the magistrate is going to be signing warrants, usually twice during the shift.

The magistrate inquires with the clerk about the number of cases on the docket and which district will be called first as the hearing start time gets closer. He instructs the clerk to close the list at 3 p.m. and call the South district first when it is time for the hearing to begin. At 3:34, the clerk calls the South district; the speakers project the ringing connection for the video chat before the image of a single plastic chair pops up on the television screens. The magistrate exchanges greetings with the officers managing the accused in this district and the first accused enters the screen and sits in the chair approximately 10 seconds later. The young white man is wearing street clothes – a white t-shirt and jeans. Those arrested in Philadelphia are held in regional holding facilities and are only transferred to the central holding facility after the preliminary arraignment hearings if and when they are unable to post bail. As a result, they remain in the

clothes they were wearing at the time of their arrest during this first hearing. Commissioner Lange states the accused's name and the charges against him, and informs the individual of the next required court appearance, speaking into the microphone in front of him that will remain on for the entire hearing. After this, in most cases, the magistrate will then decide on the accused's eligibility for indigent defense counsel. On occasion, the magistrate will read the facts of the case aloud and engage in a "question and answer" session with the accused. During this exchange, the magistrate will inquire about income and the amount of money the accused had at the time of arrest, the number of dependents and whether the accused provides support for children, and any others factors that may be relevant to making the bail decision. Between 25 and 50 individuals come before the court for bail during a typical preliminary arraignment hearing in Philadelphia.

### **Variables Used in Making Bail Recommendations and Decisions**

In Philadelphia, Rule 523 – Release Criteria of the Criminal Procedure Statutes of Pennsylvania – is supposed to provide a road map for bail decisions. Rule 523 requires that the following information be included in decision making at this first phase of the criminal court system:

(1) the nature of the offense charged and any mitigating or aggravating factors that may bear upon the likelihood of conviction and possible penalty, (2) the defendant's employment status and history and financial condition, (3) the nature of the defendant's family relationships, (4) the length and nature of the defendant's residence in the community and any past residences, (5) the defendant's age, character, reputation, mental condition, and whether addicted to alcohol or drugs, (6) if the defendant has previously been released on bail, whether he or she appeared as required and complied with the conditions of the bail bond, (7) whether the defendant has any record of flight to avoid arrest or prosecution or of escape or attempted escape, (8) the defendant's prior criminal record, (9) the use of false identification, and (10) any other factors relevant to whether the defendant will appear as required and comply with the conditions of the bail bond. (p. 1495)

Part B of Rule 523 reads:

The decision of the defendant not to admit culpability or not to assist in an investigation shall not be a reason to impose additional or more restrictive conditions of bail on the defendant. When deciding whether to release a defendant on bail and what conditions of release to impose the bail authority must consider all the criteria provided in this rule, rather than considering, for example, only the designation of the offense or the fact that a defendant is a nonresident. (p. 1495)

The statute above outlines the release criteria that are supposed to be used by the magistrates in Philadelphia in making decisions on bail; however, a number of other factors actually impact bail decision making. The remainder of this section will be different from the discussion of Atlanta's First Appearance in that it will outline these variables only as they are relative to decisions made by bail commissioners and guideline recommendations since the other courtroom workgroup members in Philadelphia (i.e. A.D.A.s, P.D.s, private defense attorneys, pretrial services) typically do not provide the magistrate with recommendations for bail. On rare occasions, the district attorney's office may request good or high bail, as discussed previously. The only other input in these proceedings is offered through recommendations made by Philadelphia's bail guidelines through PARS. Therefore, I will examine how legal and extra-legal variables and inside and outside influences function to shape the guideline recommendations and the bail commissioner's decisions.

### *Legal Variables*

As previously mentioned, legal variables – statutes, name of the offense, facts of the case, sentencing guidelines, and criminal justice history – are the most commonly identified factors in the literature regarding what impacts decision making at this first phase of the criminal court system. Statutes regarding bail have a significant impact at this phase as they explicitly limit the judicial authority of the magistrate judges to make bail decisions in certain cases. In Philadelphia, Rule 520 of the Criminal Procedure Statutes, which was amended in 2000, states:

All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great... (p.1493)

Capital murder is the only crime that this statute applies to; however, Philadelphia has added fugitive of justice in practice as an offense that may be denied bail by magistrate judges utilizing the language of the rule which refers to imprisonment as the only reasonable assurance for safety of the community. In some instances in Philadelphia, a fugitive of justice charge will result in the accused being held without bail, while in others the bail commissioner will set bail, demonstrating the judicial discretion granted the magistrate with this charge. It is important to note that in cases where the charge does not qualify as non-bailable according to the statute, the magistrate may set an excessive bail which is typically effective in holding the accused before trial. A white female district attorney underscores this saying, "Like legislatively...you're not really allowed to hold without bail [except in capital cases]. But I've never really seen them do that [hold without bail in a case other than a capital or fugitive of justice case]...they're well aware that if they set a million, nobody's gonna make 100,000 [10% of the \$1 million bail]. So, why not set a million and avoid the issue?"

If the individual before the preliminary arraignment court has not been accused of a capital offense, he is entitled to a bail decision by the magistrate judge at this first hearing. In Philadelphia, the name of the offense provides the starting point for the calculation of the recommendation from the bail guidelines. In that way, most of the courtroom workgroup members agree that the charge has a major impact at this phase. A white male magistrate concurs, stating that because the first component of Rule 523 includes the name of the offense, this legal variable's importance in bail decisions is clearly demonstrated.

Similarly to Atlanta, all other legal variables are treated as mitigating or aggravating factors used to either decrease or increase the guidelines' recommendation and magistrate's decision. Facts of the case are a legal variable identified by all courtroom workgroup members as having a significant impact at this phase. In fact, some courtroom workgroup members thought that this variable was more important in magistrates' decision making than the actual name of the offense. A white female public defender states:

I think they [magistrates] tend to look at the facts...I think they're somewhat influenced by the charge, but I think they're more influenced by the facts...'Cause I mean, I just see some of the things they do...some of them don't care about domestic violence cases. Like if you tried to kill your wife, they're not gonna set the same bail as if you tried to kill some random person on the street. Like, so I know they look at the facts 'cause if they didn't, the bail would be more consistent across the board.

According to this individual, the importance of facts of the case is demonstrated through the lack of consistency in bail decisions for comparable charges. She points out that some magistrates do not consider all criminal acts in the same way, pointing out that some "don't care about domestic violence cases." This public defender feels that magistrates are definitely influenced by facts of the case when making bail decisions.

Sentencing guidelines are an additional legal variable impacting bail in Philadelphia. Parallel to the effect seen in Atlanta, mandatory minimum sentences for recidivists may cause an increase in bail recommendations and decisions because the courtroom workgroup members, specifically the A.D.A.s, may view an individual facing a long prison term as a greater potential flight risk. In fact, one of the few examples of the district attorney's office providing a bail recommendation to the court are those cases in which the accused faces a mandatory minimum sentence. A white female A.D.A. states that in cases where the accused is facing 10 years in prison she is inclined to recommend a high bail because of what she believes is an increased

flight risk. For example, an individual who has been convicted of and then charged with another “felony one” (more serious felony offense), faces 10 to 20 years in prison. In these instances, this A.D.A. feels that high bails are appropriate and necessary to secure the appearance of the accused in court.

In Atlanta, criminal justice history was identified as the most important legal variable; however, in Philadelphia, this variable overall is significantly less of a factor in making bail recommendations and decisions. Yet there is one component of criminal justice history that the courtroom workgroup members underscore as having a major impact on bail – prior failures to appear. Similar to the impact seen in relation to mandatory minimum sentences, prior failures to appear may provide an instance in which the A.D.A. will make a bail recommendation to the court. A white female A.D.A. says, “If they have had past cases where they didn’t show up for court, that’s a big one for us...we would feel that that’s more risky to release them to the community.” The other components of an individual’s criminal justice history play a smaller role in the decision making at this phase. The same A.D.A. emphasizes this point stating:

Just because he had two prior robberies doesn’t mean that I’m gonna set a high bail in retail theft. We’re not gonna take up space in the prison... Were they, you know, in combination with a drug history or maybe there’s a drug history now. Maybe the underlying problem now is the person’s using drugs, not that they are a violent person.

According to this individual, the district attorney’s office attempts to include a broader picture of the accused when making recommendations for bail, not solely focusing on the crime, but instead including what factors may have motivated the criminal act. Interestingly, prior failures to appear may not impact the recommendations created via the bail guidelines because the system cannot calculate this variable and is therefore unable to include it in its formula for bail. As noted in Atlanta, legal variables are only one piece of the puzzle in understanding how bail recommendations and decisions are made. Even more apparent in Philadelphia than in Atlanta is

the multitude of other variables and influences which impact decision making at this phase, particularly in this system which so heavily relies upon a computer formula for recommendations.

### *Inside Influences*

As seen in Atlanta, factors occurring inside the courtroom have a major effect on bail recommendations and decisions. However, these inside influences – information, support, negotiation, interaction and time – impact this court phase in notably different ways in Philadelphia. Here the courtroom workgroup's access to information is much more limited. Throughout the pretrial process, the different entities of the criminal court are only granted access to information at certain times. For instance, pretrial services cannot access the charges against an individual until the pretrial interview has been finished. In addition, defense counsel is prohibited from obtaining copies of the police report or any other summaries of the alleged crime until discovery takes place, sometimes months after the preliminary arraignment hearing. Only if the police report is read aloud by the magistrate will defense counsel have an opportunity to take notes on what allegedly took place. This puts the accused at a disadvantage as the state is equipped with access to all information, as well as having direct contact with law enforcement involved in the case. Essentially, the defense is unable to prepare using any information related to the offense(s), while the state is in a position to actually surreptitiously delay the preliminary arraignment hearing in order to amass more evidence against the accused. A white female public defender comments on this issue saying:

In addition to the police report, they [A.D.A.s] have access to the police for crying out loud. They can always go back and find out more information from the detective, the investigating detective or the police officers that dealt with the scene...they can, you know, withdraw and hold off a complaint for a day and investigate further...I can't, in recent memory, recall a time when the district attorney's office was held to account,



where the police department was held to account for the fact that they held somebody in custody for a little while, while they investigated further.

According to this public defender, the district attorney's office has a definite advantage in regards to access to information. She notes that being able to speak directly to law enforcement involved with the case enables the A.D.A. to secure a wealth of information not available to the other courtroom workgroup members. Furthermore, the district attorney's office is even able to hold the accused in custody while they work to compile more information, something for which they are rarely reprimanded for according to this public defender.

However, the inability of the other courtroom actors to access information has a relatively small impact on this phase of the criminal court process as these individuals do not typically offer recommendations. The issues relative to information significant to the bail process are demonstrated when pretrial services cannot verify information provided by the accused, thereby inhibiting an accurate bail calculation by the guidelines. Conversely, the more demographic and personal information collected by pretrial services on the accused, the higher the guideline score and lower the bail recommendation. In effect this information separates the accused from the legal charge, acting as a buffer that lowers the guidelines' bail recommendation.

Most important is the impact information has on the magistrate's decision making. When making bail decisions, the magistrate has access to all of the information on the accused in the PARS, which includes: police reports, complaints and formal charges made by the DA's office, the entire criminal history of the accused (which includes Philadelphia, surrounding counties and states), number of convictions, number of past failures to appear, number of non-willful (good reasons for missing court) failures to appear, the number of bench warrants, and the community ties report created by pretrial services. According to a white male magistrate, all of this

information is taken into consideration when making a decision on bail. When compared to Atlanta, the magistrates in Philadelphia have access to a more holistic picture of the accused when making decisions on bail.

Support for the accused present in the courtroom for the most part is not evident in the arraignment process in Philadelphia. One reason for support not being a part of the process is the closed circuit television appearance system used in this city. The district holding facilities are not equipped for loved ones to appear for support and the trip to the CJC located downtown is often too far for them to travel or would require a long trip on public transportation. Also, the accused have no idea when they will be placed on the arraignment docket, sometimes being placed on the list five minutes before court starts. This often prevents them from informing their family and friends of the hearing's start time. Although the system does not foster demonstrations of support, a white male magistrate says support can act as a mitigating factor when making bail decisions. He states:

...we must consider mitigating or aggravating factors. A loved one taking the time and making the effort to come to court would be a mitigating factor. This is a form of support system, a measure of support, and increases the likelihood the defendant would appear in court.

Similar to the sentiments of the courtroom workgroup in Atlanta, this magistrate appreciates the effort put forth when loved ones come to court and indicates that having a loved one present as support demonstrates that there is someone to ensure that the accused will appear at the next court hearing. A white female public defender underscores the value that having support in the courtroom has for bail outcomes for the accused noting:

I've seen magistrates depending on who's in the room go from as much as a 50% reduction. I have had them talk to the family members about what kind of money they can get together for bail and set it...[They] talk to them and be like, "How much can you make without, you know, getting evicted?" and cater it [amount of bail] to what they think they can get together.

According to this individual, support can be hugely beneficial for the accused, noting that in some cases having loved ones present resulted in the magistrate decreasing the amount of bail by 50 percent.

Negotiation in Philadelphia is no different than the previous inside influences mentioned in this section in that it essentially has no place in the courtroom due to the structure of preliminary arraignment court. On very rare occasions, the district attorney's representative and/or the public defender's representative may disagree with the bail decision made by the magistrate. In this event, negotiation would occur in what is known as an appeal bond. All parties involved must provide reason(s) as to why they disagree with the magistrate. If the dispute cannot be settled amongst them, a municipal court judge (on phone rotation) is called to settle the dispute. It is important to note that some of the lack of negotiation may be due to the fact that none of the courtroom actors are required to have J.D.s and are therefore not formally trained in legal discourse. Negotiation occurred in only 3% of cases in Philadelphia, compared to more than 41% of cases in Atlanta.

Interaction between the magistrate and the accused had a much bigger role in Philadelphia than in Atlanta. In my observations in Philadelphia, the percentage of cases in which the bail commissioner interacted with the accused is 3 times that of Atlanta (28.9% compared to 9.5%). The interaction between the magistrate and the accused most often centers on income, the amount of money they had on them at the time of arrest, and the number of children. The magistrate uses this information to help make bail decisions. If nominal bail was being considered and the accused had money on their person when arrested, the magistrate

typically sets bail at an amount not exceeding the money the individual had. The accused is then able to bail himself out, preventing a trip to State Road (i.e. the centralized holding facility for those denied bail or who cannot pay bail).

However, public defenders or private defense counsel do not have the ability to speak privately with their clients in Philadelphia. Defense counsel is unable to have confidential meetings with them at any time during this first phase of criminal court proceedings because the accused appear via closed circuit television. This lack of interaction is significant in that the accused is prevented from assisting the defense in providing information that might be used to secure a lower bond.

Resembling the limited time available in making bond decisions in Atlanta, decisions in Philadelphia are also made extremely quickly. The average time spent on preliminary arraignment cases was 2 minutes and 17 seconds, with some cases being decided in as few as 16 seconds. Very little time is spent before the start of the hearings looking over cases as individuals are added to the docket up until five minutes before the hearings actually begin. It is virtually impossible to make informed decisions about bail in so short a time. The short trials, coupled with the limited opportunities for negotiation and interaction between the accused and defense counsel, underscore the financial motivations of Philadelphia in this first phase of the criminal court system. The use of representatives in the place of assistant district attorneys and public defenders who are attorneys is one example of Philadelphia's attempts to cut costs associated with bail procedures. Paying a paralegal's salary is far cheaper than paying the salary of an attorney with a J.D. who has passed the bar. Also, because these individuals are not formally educated in legal discourse, there is little to no negotiation taking place during these hearings. This reduces the time (and subsequently money) spent on these hearings, while creating real

consequences for the accused at this phase. Having no or little access to an attorney for representation in a hearing prevents the accused from receiving the best opportunity to secure pretrial release. In addition, the use of closed circuit television saves the city a great deal of money in transportation and staffing costs associated with bringing the accused from the district holding facilities to the Center for Criminal Justice. Again, this cost-saving mechanism has major consequences for the accused. A white female public defender says, “It is an instance where judicial efficiency has trumped the rights of the individual.” She adds that the accused frequently do not even attempt to participate in the hearing because they are so marginalized by their physical distance from the courtroom. She notes, “They do not have to be regarded as human beings because they’re really on a TV and at any time the magistrates can push the button and turn them off. And they’ve done that. I’ve seen them do that.” Finally, the rapid-fire pace by which many of the bail decisions are made in Philadelphia indicates that efficiency is a chief objective of this city’s bail system.

### *Outside Influences*

Possibly more than any other group of variables, outside influences in Philadelphia provide insight into the capitalist foundation on which the entire preliminary arraignment process functions. Not only do these variables – overcrowding, media, political pressure, bail bondsmen, and bail revenue – have a major impact on bail decisions in Philadelphia, but they also clearly demonstrate the financial motives which shape this city’s organizational structure. A key issue surrounding bail decisions in Philadelphia involves the high volume of cases coming through their system and the subsequent overcrowding of the holding facilities there. Handling the volume at the arraignment phase has presented several challenges for the court system as well as the jails. According to courtroom workgroup members, Philadelphia has struggled with the

overpopulation of the jails since the early 1970s; they are still trying to fix the problem. Currently, Philadelphia, like Atlanta, is under a federal decree issued in 1991 to address overcrowding and maintain a jail population under the maximum number of inmates. The consequences of violating the order are large economic sanctions and/or having the jail placed under the authority of the federal government. In addition, the city has been involved in a number of civil suits stemming from issues associated with overcrowded jails. In 2006, Lee Bowers filed a class action suit against the City of Philadelphia in the United States District Court, claiming that he suffered injuries at a Philadelphia district holding facility as a result of overcrowding (*Bowers v. City of Philadelphia*, 2006). In 2007, the court issued a preliminary injunction citing the following “unconstitutional conditions:”

...holding of post-arraignment detainees for days in holding cells that far exceeded the capacity of the cells, the failure to provide beds and bedding, the failure to provide materials for personal hygiene, the failure to provide for the medical needs of detainees, the failure to timely classify detainees in the intake unit at the CFCF [Curran-Fromhold Correctional Facility], and the lack of fire safety protection at the PAB [Philadelphia Police Administration Building] and in the Police Districts. (*Bowers v. City of Philadelphia*, 2006)

In December 2008, the court reached a settlement when the city agreed to limit the jail population and/or create additional housing for jail inmates; however the plaintiffs received no compensation in this case (*Bowers v. City of Philadelphia*, 2006).

One way that Philadelphia attempted to address the issue was to limit the number of people at the arraignment phase that would be unable to post bond, meaning magistrates would grant more non-financial bonds in lieu of financial bonds. In 2009, 40% of the accused were released on non-financial bail at this first phase. However, these numbers were still much lower than other large urban locales such as New York which released 65% on non-financial bail and Washington, D.C. which released 85% on non-financial bonds in that same year (The

Philadelphia Research Initiative, 2010). One private defense attorney shares his thoughts on overcrowding:

I [would] love to be in the room when you ask bail commissioners as to whether or not that [overcrowding] is a subject of many discussions between them and their supervisors or among themselves or has it ever been a topic... there is a lot of programs now, you know, ROR and various release conditions because of overcrowding. Frankly...It ain't because they found God. It's because they have to save money because there is a federal court who's ordered them or the penalty of further economic sanctions, you know, to keep the population down. So they are releasing these people not out of the goodness in their heart but because they are constitutionally mandated.

This individual is underscoring the importance of financial motives when discussing overcrowding as an issue in the Philadelphia criminal court system. According to this private defense attorney, magistrates have not begun increasing the numbers of accused granted pretrial release because it is the right thing to do; they are instead doing so because of the federal decree. Unable to bear the burden of hefty fines associated with noncompliance with the decree, the goals of this city's bail system may be less focused on protecting the community and ensuring the appearance of the accused in court, and more focused on avoiding fines and costs of \$95 per day to house inmates. According to the Bureau of Justice Statistics annual survey 2009-2010, Philadelphia was one of six counties that helped account for the nation's second major decline in jail population since the inception of the report in 1982 (Klein, 2011). This opportunity to reduce the jail population and thereby save some money for the county has an impact on the decisions made on bail. Put simply, according to a magistrate in Philadelphia, "We want most to post their bail and not be incarcerated costing tax payers money." Overcrowding adds pressure on bail commissioners to at the very least be mindful of the federal decree and the daily costs associated with incarceration when making decisions enabling the accused to secure pretrial release.

Like other major urban centers, the media has an influential voice in Philadelphia. As it relates to the criminal court system, one issue popularized by the media is the growing fear of police shootings and murders by “career criminals” in Philadelphia. The media’s coverage of these “cop killers” creates panic when citizens believe that the system is unable to protect them from dangerous individuals who are not afraid to shoot at the police. In turn, magistrates are then under extreme pressure to keep these individuals locked up, without taking into consideration any of the factors mandated to be included in bail decisions by Rule 523. One example is the case of Raheem Griffin<sup>24</sup>, a 17 year old Black male accused of robbing and shooting a Philadelphia Housing Authority police officer in 2008. Griffin was originally charged with attempted murder and bail was set at \$5 million. At Griffin’s preliminary hearing, a municipal judge dropped the attempted murder charge and reduced the bail to \$75,000 noting that the evidence indicated that Griffin did not intend to kill the officer, but only sought to rob him (Shaw, 2008). There was an immediate uproar from the district attorney’s office, law enforcement and the public. The media reported the outcries, quoting one police officer who said, “Give him another motherfucking rifle! He can just walk! That’s just madness!” (Shaw, 2008). Soon thereafter, a common pleas judge increased Griffin’s bail to \$750,000 and required that he wear an electronic monitoring bracelet if he was able to post bond. This example demonstrates the impact media has on decisions made at this phase of the criminal court system.

The combination of the overcrowding issue and sensationalized media accounts of crime undoubtedly create conflicting political pressures on bail commissioners to prevent congestion in the jails, while at the same time being tough on crime. A white female public defender describes this pressure saying, “Most judges and magistrates frankly live in fear that someone they let out

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<sup>24</sup> The name of this individual has been changed.



on bail...is going to kill somebody, and their name is gonna be the one in the paper, like ‘This judge or magistrate let this person out.’” An additional pressure is added because bail commissioners are appointed for four year terms by the President Judge of the Municipal Court, making the decisions they make directly connected to their livelihood. In this way, magistrates certainly feel political pressure when making decisions on bail.

Philadelphia is a very unique place in relation to the impact of the next outside variable, bail bondsmen, on the first phase of the criminal court system. Bail bondsmen are an integral part of most bail operational structures in the United States; however, Philadelphia has gone against this trend and ostracized these private companies, essentially preventing them from conducting business in the city. Bondsmen are actually legally permitted to do business in Philadelphia, but have been largely absent from the city since the 1970s. As previously mentioned, bail bondsmen are only allowed to write a certain type of bond – a surety bond. Philadelphia’s bail structure does not use surety bonds as an option, preventing bondsmen from operating. In Atlanta, a number of the research subjects felt that bondsmen serve a dual purpose, not only getting people out of jail, but also insuring the court that they will produce the accused for any court dates relative to the offense which contributes to the clearing of dockets for the city and moving cases through the system more efficiently. The impact of the absence of bondsmen is demonstrated by the percentages of the accused who abscond from justice in Philadelphia. According to a Bureau of Justice Statistics 2010 report, Philadelphia was tied with Essex County, N.J. for the worst fugitive rate; in both counties, 11% of fugitives absconded from justice, costing the city over \$1 billion dollars in bail debt [money owed to the court on financial bonds after the accused have absconded] (McCoy and Phillips, 2010). Currently Philadelphia has decided to take action in these cases and is actively going after indemnitors who owe unpaid bonds. According to *The*

*Philadelphia Inquirer*, as of late June 2010, Philadelphia court officials have launched an initiative to recover the \$1 billion bail debt and track down the more than 200,000 people who have absconded from justice over the last three decades by “send[ing] out several dunning notices to debtors, post[ing] their names on the Web and eventually turn[ing] their cases over to private debt-collection firms if people don’t pony up” (McKoy, 2010). It is important to note that the 200,000 individuals who are being tracked down include people who have already been penalized by the system, paid their debt to society and are currently trying to survive with the stigma of being a felon. These individuals failed to show up for their court appearance, were re-arrested on a bench warrant for the original charge or arrested for a new offense and were tried and sentenced. For instance, I attended an “Alternatives to Cash Bail” symposium at the Community College of Philadelphia in June, 2011. In attendance were several representatives from the Philadelphia Defenders Association, District Attorney Seth Williams, along with a few hundred community residents and concerned citizens of Philadelphia. One gentleman shared his experiences with the unpaid bail initiative explaining that he had just received a letter from the court system that claimed he owed the city \$25,000 for skipping bail in 1988. The letter indicated that he would be sued if he did not contact the court and try to settle the claim immediately. The gentleman admitted that he had missed his initial court date but was arrested a short time later on the subsequent bench warrant. He was then denied bail and remained in the county jail until he was sentenced to a term of 12 years for the crime. He served his time and had been back in the community for a number of years, working and having no more contact with the criminal justice system; until he received the letter. According to the city of Philadelphia, he is still liable for the \$25,000 bail from the failure to appear in 1988 even though he was eventually arrested and sentenced for the crime. He asked, “What am I supposed to do?” Many other citizens shared

similar stories indicating the prevalence of the issues surrounding the new bail debt initiative in Philadelphia.

Nevertheless, those involved with the judiciary in Philadelphia do not feel that the lack of bail bondsmen has anything to do with the fugitive rate or high bail debt. More pointedly, they simply do not want bondsmen back in the city of Philadelphia. Most rely on the common stereotypes of bondsmen as being shady, money hungry renegades who carry a badge and a gun as support for their efforts to keep bondsmen out of Philadelphia. A white male private defense attorney says this about bondsmen:

I don't believe in bail bondsmen; I think they should remain barred or get back to being barred. The ones I have met are really skeezy. They refer cases to friends of theirs that are attorneys for a kickback; I mean they are not doing it for free. I know lawyers who are paying these guys money up to a third of the cases as if these guys were lawyers. That gives the bail bondsmen incentive to snatch these people up as quickly as they can and spit them out to usually middle of the pack lawyers or crappy lawyers just so they can get money in return.

This attorney states explicitly that he believes that bondsmen should be barred from operating in the city of Philadelphia, adding that bondsmen are “skeezy” and out for personal gain. According to this attorney, bondsmen actually do a disservice to the accused by connecting them to inept defense attorneys in order to receive financial “kickbacks,” indicating that he does not see bondsmen impacting bail procedures in any positive way.

The fact that Philadelphia does not utilize the services of bondsmen leads to a discussion of the impact of bail revenue on this city's bail operational structure. Philadelphia courts are able to profit directly when individuals post bail because there are no bail bondsmen and therefore the judiciary can set either a 10% deposit bail or a straight cash bail. When a 10% deposit bail is issued, the 10% of the total bond amount

required of the accused to secure release is paid to the court in Philadelphia, in addition to administrative costs associated with processing the bond. For example, if a person has a \$5,000 10% bail, they would need to post \$500 (10% of the total bond amount), in addition to a \$10 processing fee, bringing the total to \$510. Philadelphia's system of 10% bail is similar to the ten percent bond system in Atlanta; however, the latter city issues surety bonds much more frequently, making the use of bondsmen much more accessible. Furthermore, with 10% deposit bonds in Atlanta, if the accused shows up for all court appearances and the case is adjudicated, the individual receives back one hundred percent of the bond that was paid to secure his release. However, in Philadelphia, thirty percent (\$150 in the \$5,000 example) of the amount paid to secure release is retained by the court<sup>25</sup>, and only 70% returned to the individual, illustrating clear financial incentives for the city of Philadelphia. Although the purpose of bail is to ensure the appearance of the accused in court, Philadelphia's system nevertheless penalizes the accused even when they comply with the criminal court process. A white female public defender remarks on the absence of bondsmen and the process of bail revenue in Philadelphia saying:

I mean, ostensibly, it's to get them to come to court by putting up money that they won't get back [if they abscond]. I think that sometimes that purpose is lost. Listen, if you set \$5,000 bail and someone's family pays \$500, for most of my clients, that's really big money, it really is. So that should work. But the fact of the matter is we don't have bail bondsmen here, the city doesn't, which is sort of a bizarre phenomenon here. They choose to keep 30%, so if you've set \$5,000 bail, the city says you only have to pay 10% of that. So I'm paying \$500, well \$510, [with] a processing fee. Of that, the most I can ever get back is \$350. And the issue is, the person who paid it may or may not have an understanding of [that]... So I think there's a real education problem with when they pay bail and what that bail money means. And I think when you look at it, a lot of people released on their own recognizance come back and a lot of people that put up cash don't. So it's really difficult.

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<sup>25</sup> The 30% retained by the court is capped at \$750, meaning that no more than that amount may be kept by the court, even if 30% of the deposit equals a larger figure.

According to this public defender, the lack of bondsmen has an impact on the indigent accused who are subsequently forced to produce a sum that is “really big money” to them in order to secure release. In addition, loved ones who post bail are often uneducated about the system and are unaware that even if the accused appears in court, some of the money they have posted will not be returned. Here, the process of bail revenue in the city of Philadelphia has a major financial consequence for the accused and their families. It is also important to keep in mind the high number of people that do not show up for court and forfeit the 10% deposit they posted to secure their release are additionally liable directly to the city of Philadelphia for the remaining 90% of the original bail amount. Without the use of bondsmen, there is no third party to insure the appearance of the accused, meaning that the purpose of bail is lost when the accused cannot be brought into custody and tried for their alleged crimes. Nevertheless, the Philadelphia court profits when people appear and when they do not. Therefore, it is not farfetched to think that the magistrate may lean towards a nominal financial bail knowing that the system will profit when having the option to issue a non-financial or a nominal financial bail, further illustrating the implications of Philadelphia’s vested interest on this bail system.

At the Alternatives to Cash Bail symposium, many citizens inquired about what the court does with the 30% they keep from bail. None of the judiciary members could or would provide an answer to these questions. The public defender chuckled and directed the question to District Attorney Seth Williams whom responded, “We don’t handle bail money.” Other representatives blurted out, “Ask Mayor Nutter.” Tracking down this money became one of my goals. The best answer I received came from a pretrial services representative who said, “Bond money is placed into an account, both non-interest and

interest bearing. After [the] case is finalized, 31 days after disposition, [the] person who posted bail gets 70% returned. Why do they keep 30 percent [and] processing fees; not sure about why.” The overall sentiment is that no one really knows where the bail revenue goes or at least no one was willing to discuss it. I finally gained insight into this question during a visit to the Pretrial Services Division when I was given a list of “alternative to sentencing programs” titled “City of Philadelphia Department of Behavioral Health and Intellectual Disability Services Office of Addiction Services Criminal Justice and Other Court-Related Treatment Initiatives.” The individual who provided me with the list informed me off the record that the bail money is actually handled by pretrial services and used to fund programs such as: I. Criminal Justice Treatment Initiatives: (1) Forensic Intensive Recovery (FIR) Program (Early Parole), (2) Drug and Alcohol Treatment-Based Restrictive Intermediate Punishment (RIP) Program (Direct Sentencing), (3) Philadelphia Treatment Court, (4) Youth Violence Reduction Partnership, (5) Community Court, (6) Diverting Offenders Into Treatment (DO-IT)/Domestic Violence Intervention Court; II. Court-Related Treatment Initiatives: (7) Family Court (Dependency), (8) Juvenile Treatment Court, (9) Driving Under The Influence (DUI) Court; III. Support Services: (10) Case Management, (11) Core Services, (12) OAS Housing Initiatives and (13) Vocational Initiatives. According to this individual, the bail revenue is used to fund programs that are typically supported by state and federal governments, making those accused (and not necessarily convicted) of crimes foot the bill for programs from which they receive no benefit.

### *Extra-Legal Variables*

In Philadelphia, extra-legal variables, including community ties, socioeconomic status, age, gender, and race, impact the bail decision making process in very similar ways as is seen in Atlanta, with the exception of community ties. Community ties has little impact on courtroom workgroup members other than pretrial services in Atlanta; however, in Philadelphia ties to the community is cited as a key influence at this phase and is in fact included in Rule 523. Once pretrial services enters their report (which includes community ties) into the PARS, all courtroom workgroup members have access to this information. This information is the chief component to scoring high on the guideline matrix. If community ties are verifiable, the accused accumulates more points and the bail range calculated by the computer system is reduced. If these community ties are not verified, it could work against the accused when the matrix produces the bail range recommendation. The use of community ties in the calculation of the guideline recommendations is one of the principal reasons many magistrates depart from the recommendations when making decisions on bail. According to a black male pretrial services representative, this variable can essentially separate the accused from their alleged crime so that those accused of even violent crimes can be recommended for non-financial or nominal financial bail. In these instances, bail commissioners often feel compelled to ignore the recommendations and set higher bail.

Nevertheless, community ties are an important factor to the courtroom actors. One white female assistant district attorney cites their significance to her office saying:

Community ties are super important because we want to make sure that someone is going to show up for court. So if we determine that whatever crime they committed is something that we think is aailable offense that they can be in the community and not endanger anyone's safety including their own, then we have to look at the second prong, which of course is making sure that they're gonna come to court. And if they are in church groups, if they have support from their family, if they have a job, if they have

children who they support, if they...have lived in the same place for a long time, these are all things that would be to their benefit, certainly.

This A.D.A. indicates that community ties are actually the “second prong” in making decisions about who will appear in court. She notes that having strong ties to the community is certainly a benefit to the accused when in their decision making process. A white male magistrate expresses the impact community ties has in his decision making noting that significant ties indicate a “degree of stability,” making the individual more likely to appear in court. Therefore, for this magistrate community ties were very important at this phase.

Even though the organizational structure of Atlanta and Philadelphia are different, the remaining extra-legal variables – socioeconomic status, age, gender, and race – function in identical ways. In Philadelphia, like in Atlanta, poor, young Black men face unequal outcomes regardless of the impact or lack thereof of the other variables in this process. Black men accounted for 61% (n=132) of the ethnography sample in Philadelphia (N=218); thirty-nine percent (n=51) of these men were under the age of thirty-two; approximately fifty-five percent (n=72) were unemployed. The perceived threat associated with young Black men is evident in both Philadelphia and Atlanta and the system in the former city is also organized around white, middle-class cultural values. This is illustrated when one white female public defender says:

What I see is, because the large majority of people coming through the criminal justice system are African American and young...there are African American men of the 20 to 40 year old range that come through the system, a lot. And I think, I definitely have to say that for the younger men, what I see, and you know, this is where I have to ask myself a lot of questions about what I think and what I believe and what I know. But what I see generally [is] that younger African American men do not know how to present themselves and it is held against them in a very large way. That they don't speak well...that their initial words out of their mouths if they're trying to say anything for themselves are often not phrased in a way that a magistrate is going to respond to positively...if they try to be respectful, it sounds very street. (Giggles) It sounds like



something that they would say on the street. And the magistrates tend to reject that out of hand. And I think...that ends up being a racial/cultural issue.

According to this public defender, the cultural distance between young Black men and magistrates often negatively impacts bail outcomes. More specifically, the inability of young Black men to communicate effectively with the judiciary causes the magistrates to reject what is said. This public defender indicates that the notion that young Black men are “street” and magistrates are unable to relate to them has real consequences at this phase of the criminal court system as magistrates are more likely to issue more punitive decisions on bail than if they had felt some common ground with the accused. Although it is unlikely that a magistrate would state explicitly that cultural factors impact his decision making, my observations illustrate that ideas about character and values inherent in some groups and not in others exist amongst the judiciary. During the preliminary arraignment hearing of a white female from the suburbs, the white male magistrate chastised her informing her that she “has no reason to be in his courtroom” and that she is in the beginning process of destroying her family’s life. He warns, “Don't you know that there are crazy women in prison? You don't wanna go there.” Later when discussing this conversation, this magistrate informed me that he sometimes feels compelled to give an “uncle speech,” leading me to wonder if he had ever given one of these speeches to a young Black male.

It is then necessary to examine how these identity dynamics shaped the impact of other outside and inside variables. Philadelphia media’s coverage of cop killers provides one example of the reinforcement of the perceived threat associated with young Black men. Most of those accused of violent acts against law enforcement are Black men, and the media rarely neglects to plaster the images of these individuals across the newspaper and television. As in Atlanta, this is significant to bail decisions in Philadelphia because the judiciary is charged with protecting the community from dangerous individuals and those depicted as dangerous are most often young,

Black and male. It then goes without question that these images remain present in the minds of the courtroom workgroup.

Inside influences in Philadelphia functioned quite differently than in Atlanta, both overall and in relation to race and gender. (See Table 6.1).

Table 6.1: Comparison of Bail Influences and Outcomes between Black and White Men

	<b>Black Men</b>	<b>White Men</b>
<b>Had Support in Courtroom</b>	0.8%	0%
<b>Representation Engaged in Negotiation</b>	3%	0%
<b>Interaction with Magistrate</b>	25%	38.2%
<b>Average Time Spent Making Bond Decisions</b>	2 minutes and 14 seconds	2 minutes and 22 seconds
<b>Average Bond Amounts</b>	\$38,495	\$10,410

Philadelphia had a great deal more interaction between the magistrates and the accused, but Black men were less likely to interact with the magistrate than their white counterparts (25% compared to 38%). The organizational structure of Philadelphia's bail system does not make the presence of support for the accused or negotiation between courtroom workgroup members easily accessible. Therefore the impact of these variables was similar for Black men and their

white counterparts; nevertheless, the bail outcomes for young Black men were worse. The bail guidelines recommended that 6 Black males be held without bail; only 1 white male received the same recommendation from the guidelines. All three of the individuals denied bail in Philadelphia were Black men. Of those who were issued bail, 40% of Black men received non-financial bail, whereas 47% of their white counterparts were able to secure their release without posting any money or property. The average bail amount for Black males was \$38,495 compared to only \$10,410 for white males. These figures illustrate the disparities inherent in the organizational structure of Philadelphia's bail procedures. Even though the bail systems of Philadelphia and Atlanta are quite different in structure, young Black men are being treated more punitively in both cities. These unequal outcomes indicate that this first phase of the criminal court system cannot be simply examined through any set of variables or influences, but must instead be evaluated for the inherent racism, classism, and sexism built into the organizational structures of these systems. The final chapter will examine this argument, further discuss its implications, and propose change.

## Chapter 7

### DISCUSSION

This dissertation explored the nuances in the organizational structures of the bail systems of Atlanta and Philadelphia, by asking the following questions: (1) *How does the bail system operate and, in particular, how is the bail system socially organized?*; (2) *To what extent do extra-legal variables, such as age, race, gender, and social class, affect the bail system?*; and (3) *To what extent do the courtroom workgroup members' recommendations affect the bail decision?*. In part, examining these structures provides insight into whether modern systems of bail in two different parts of the United States have addressed those issues which have plagued the larger administration of justice in this country for centuries. More specifically, this research allows for an evaluation of the effectiveness of these two structures in dealing with the ambiguity of the Eighth Amendment. In addition, the study investigated whether disproportionate outcomes for minorities and the poor were still an issue impacting the first phase of the criminal court system. While the research demonstrates that these two cities have distinct structures that shape bail outcomes in unique ways, overall Atlanta and Philadelphia were comparable in the disproportionate outcomes for minorities. This chapter will address the research questions in comparing the processes of the cities, as well as present the limitations, conclusions and implications of the research.

## Atlanta vs. Philadelphia

Table 7.1: Comparison of Social Organization of Bail in Atlanta and Philadelphia

	<b>Atlanta</b>	<b>Philadelphia</b>
<b>Type</b>	Traditional	Non-Traditional
<b>Focus/Interest</b>	Punitive; Rule of Law	Financial Motives
<b>Statutes</b>	Ayala Case; 7 Deadly Sins; Riverside; House Bill 889	Rule 520; Rule 523
<b>Location and Time of Court</b>	Central Location; Hearings 7 Days per Week at 11 a.m.	District Holding Facilities; Hearings 7 Days per Week in 6 Shifts 24 Hours per Day
<b>Magistrates</b>	Appointed by Superior Court Judges; Must have J.D.	Appointed by Municipal Court Judges; Must have B.A.
<b>Actors in Courtroom</b>	Magistrate; Assistant District Attorney; Public Defender; Pretrial Services Representative; Clerk of Court Representatives; Sheriff's Officers	Magistrate; D.A.'s Representative; P.D.'s Representative; Clerk of Court Representatives; Sheriff's Officers
<b>Access and Use of Information</b>	Expanded Access; Limited Use	Limited Access; Expanded Use
<b>Recommendations</b>	Provided by Courtroom Workgroup	Generated by Bail Guidelines
<b>Primary Type of Bond Issued</b>	Surety	10% Deposit
<b>Bondsmen</b>	Yes	No

Overall, Atlanta's bail system is more punitive and centered around the rule of law and protecting the community from criminals, while paying less attention to the accused's profile in the process. Conversely, the system in Philadelphia has much more focus on financial interests, attempting to conserve their own money and that of the taxpayer by not incarcerating individuals unnecessarily. To achieve this goal, the accused are evaluated holistically in Philadelphia which includes them more in the process. In addition, Atlanta's bail system maintains a more traditional or conventional structure that that found in Philadelphia. (See Table 7.1).

### *Comparison of Legal Variables*

Atlanta's bail procedures are grounded in the Ayala case which sets precedent for determining whether to grant release in First Appearance using four criteria all relative to reoffending and ultimately the protection of the public. Furthermore, the discretion of the judiciary in Atlanta is limited in order to ensure compliance with the "rule of law," which is a more traditional standard for courtroom procedures. In addition, the use of the 7 deadly sins statute, as well as House Bill 889 which requires superior court judges to sign off on any sign own bonds issued by magistrates, restricts the authority in decision making of magistrates (Georgia General Assembly, 2010). These legal variables result in a system which is more punitive for the accused by keeping more locked up before trial.

On the other hand, as demonstrated in Chapter 6, Philadelphia's bail system is less punitive and more driven by financial motives. While Atlanta's process is guided by the Ayala case, Philadelphia's bail system's foundation is in Rule 523, which mandates that magistrates include ten criteria when making decisions on bail, four of which explicitly reference the holistic picture of the accused previously mentioned (e.g. history of mental illness, residential stability,

character, reputation). In addition, Philadelphia places far fewer restrictions on the judicial authority of magistrate judges as capital murder is the only charge for which a magistrate judge cannot set bail. Taken as a whole, these legal variables result in a system in which far more individuals secure pretrial release.

### *Comparison of Inside Influences*

A comparison of the impact of inside-the-courtroom influences on bail procedures in Atlanta and Philadelphia provides us insight into how these systems are more broadly ordered around two distinct social organizational structures. In each city, the presence and utilization or lack thereof of these variables both illustrate and reinforce the dynamics of the first phase of the criminal court system. Atlanta's system, focused on protecting the community and not necessarily the rights of the accused, maintains a more traditional courtroom structure as evidenced by the inside variables. For example, most members of the courtroom workgroup in Atlanta (i.e. magistrates, A.D.A.s and defense counsel) are required to have earned a law degree. More specifically, this enables these actors to engage in legal discourse during First Appearance, negotiating on behalf of the state or the accused, providing the magistrates with recommendations, and making decisions based on the "rule of law." As noted in Table 7.2, in more than 40% of the cases observed in Atlanta, the attorneys in the courtroom engaged in negotiations, ranging from arguing the merits of the probable cause for arrest to disputing the appropriateness of the opposing counsel's recommendations for bail. In addition, in nearly 40% of the cases, both the state and defense provided recommendations for bail to the magistrate again demonstrating the involvement of the workgroup during First Appearance.

Table 7.2: Comparison of Inside Influences in Atlanta & Philadelphia

	<b>Atlanta</b> <b>(n=221)</b>	<b>Philadelphia</b> <b>(n=218)</b>
<b>Support (yes)</b>	20.8%	0.9%
<b>Interaction (yes)</b>	9.5%	28.9%
<b>Negotiation (yes)</b>	41.2%	3.2%
<b>State Recommendation (yes)</b>	38.5%	21.3%
<b>Defense Recommendation (yes)</b>	38.5%	1.5%
<b>Average Time</b>	2 minutes 48 seconds	2 minutes 17 seconds

Conversely, Philadelphia’s system operates according to an unconventional or non-traditional structure. For example, because none of the actors in Philadelphia are required to have J.D.s, there is very little legal discourse taking place in the courtroom. Courtroom workgroup members engaged in negotiations in only three percent of cases in Philadelphia. Furthermore, recommendations from the workgroup were not typical here; in approximately 20% of cases the state presented a recommendation and in less than two percent of cases the defense did the same. It is important to note that the recommendations (typically only for “good” or “high bail”) from the state were provided via the PARS and not actually made in open court. The difference in Philadelphia between the percent of cases where the state made a recommendation compared to those in which the defense provided one is also a significant component of this discussion. The



state was more than 25 times more likely to provide a recommendation, indicating that the accused were receiving little to no representation at this phase. In contrast, in Atlanta defense counsel provided a recommendation in all cases in which a recommendation was presented by the state. Aside from the rare occasions in which D.A. or P.D. representatives offered recommendations, as previously discussed, in all cases recommendations for bail in Philadelphia are generated through the computer-based bail guidelines. In addition, Philadelphia's use of closed circuit television is a cost-saving measure which reduces expenditures associated with this phase of the criminal court system. This use of technology in Philadelphia in lieu of the accused and the courtroom workgroup's participation further demonstrates the unconventional structure of their bail system in which administrative decisions are often made for pecuniary interests.

Furthermore, the lack of interactions between the accused and the magistrate, as well as the frequent presence of support for the accused in the courtroom underscore the traditional structure of Atlanta's bail system. Magistrates interacted with the accused in less than 10% of cases in Atlanta. In this city, the accused are frequently reminded of their right to remain silent and are seldom addressed directly by the magistrates. Instead, the defense counsel present (either the public defender or a private defense attorney) speaks on the behalf of the accused as is typical of courtroom proceedings at all other phases of the criminal court system. However, because Philadelphia's system is what may be called more informal and certainly less traditional, the magistrates here more frequently interact with the accused. In nearly 30% of Philadelphia's cases, the judge spoke directly to the accused, often asking questions such as, "How many children do you have and do they live with you?;" and "How much money do you have on you now?"

Additionally, the structure of Atlanta's bail system is more amenable to the accused having support present for their hearings. First Appearance begins each day at the same time at a central location in downtown Atlanta making appearing in court to support a loved one much more convenient. There is ample parking and easy access to Fulton County Detention Center. On the other hand, the structure of Philadelphia's system provides a number of barriers to getting to court to support the accused making this variable in Philadelphia extremely rare. Loved ones in Philadelphia are frequently unable to make the trip downtown in this large city without a great deal of inconvenience. Public transportation to the CJC may involve two or more transfers and parking in the area is limited and expensive. In addition, preliminary arraignment hearings take place 6 times a day over a 24 hour period, with the accused receiving little to no notice of when they will be placed on the arraignment docket, further complicating support.

In addition, information is used differently in Atlanta and Philadelphia. With Atlanta's system being more punitive and traditional, information about the accused is only used by the defense and not by the state for recommendations or magistrate's decisions, although all the courtroom actors have access to it. In Philadelphia's non-traditional system information is more widely used to evaluate the accused holistically and impact the bail guidelines in PARS, which uses a bail point scale to determine recommendations.

With respect to inside influences, there are a few points of similarity between the structures of Atlanta and Philadelphia. The time variable provides one example, demonstrating both cities' objective to maximize efficiency in their bail systems. With decisions being made in less than three minutes on average, the systems of both Atlanta and Philadelphia are attempting to make the most of the limited time available for bail hearings.

### *Comparison of Outside Influences*

The unique influence of factors outside the courtroom in both cities provides further insight into the organizational structure of the bail systems in Atlanta and Philadelphia. Overcrowding offers one such example. In Philadelphia, the financial considerations associated with overcrowding are at the forefront of bail processes. Because overcrowding has been a long-standing issue for this city, the system is structured to address the problem in a number of ways, such as holding several preliminary arraignment hearings each day, outsourcing to other detention facilities and expanding the use of non-financial bail. Overall, this approach demonstrates Philadelphia's commitment to avoid the financial consequences of overcrowding. However, Atlanta's system is less concerned with these consequences and more focused on protecting the public and following the rule of law, resulting in bail outcomes that are often less favorable for the accused. Although overcrowding is a topic of consideration for the judiciary in this city, overall this issue does not generally prevent magistrates from setting the bonds which they feel are appropriate.

In addition, the use of bail bondsmen and bail revenue add to the understanding of the bail structures in Atlanta and Philadelphia. Atlanta's use of bondsmen demonstrates the traditional organization of bail processes. In this city, bondsmen are responsible for ensuring that those released on surety bonds via the use of the bail bonding system appear in court directly contributing to the lower rates of failures to appear (F.T.A.s) in Atlanta. In contrast, Philadelphia's rate of F.T.A.s is amongst the highest in the country. In this city, it could be argued that the criminal court system is more focused on collecting unpaid bail after an F.T.A. than on guaranteeing that the accused appear in court. Here, Philadelphia's structure reveals its financial interests as compared to Atlanta's structure which focuses on making certain that the

accused appear in court and are processed through the system. Furthermore, the majority of bail revenue is received by bondsmen in Atlanta, as compared to the bail revenue collected by the criminal court system in Philadelphia. Philadelphia's structure in relation to revenue is again indicative of the city's financial interests in its bail system. As Philadelphia overwhelmingly sets 10% deposit bonds and bail bondsmen are largely absent from bail operations here, the city has a great financial stake in these processes. These financial interests represent a move towards what may be called the municipalization<sup>26</sup> of the first phase of the criminal court system in Philadelphia.

In comparing the outside influences and their relation to bail structures, political pressure functions as a point of comparison for these two cities. The magistrates in both Atlanta and Philadelphia are subject to political pressures associated with their decisions on bail because they are appointed by higher ranking members of the judiciary. Magistrates are forced to balance protecting the rights of the accused with protecting the community, while at the same time making decisions that are in the best interest of their job security. A bail decision that creates discontent amongst the community may jeopardize their position. In these instances, the process of appointing magistrates reinforces the impact of political pressure at this phase of the criminal court system.

#### *Comparison of Extra-Legal Variables*

Although distinct in their use of this information, extra-legal variables are a major component of the bail structures in both Atlanta and Philadelphia. In both cities, pretrial services functions as the primary source of information about the accused via their interview process post

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<sup>26</sup> This term refers to the process of transferring the collection and use of bail revenue from private companies (e.g. bail bondsmen) to municipal agencies (e.g. courts, alternative to sentencing programs, etc.).

arrest. Atlanta's pretrial agency uses the information collected about the accused to determine the individual's eligibility for their programs; Philadelphia's agency produces a profile of the accused which is input into the PARS and used to generate recommendations by the bail guidelines. In both cities, the collection of this information from the actual interview to the process of verification, as well as the range of information collected are based on a white middle-class value system. For example, in both cities, the residence of the accused is verified by pretrial services contacting references and/or other members of the accused's household. Taken at face value, this verification appears to be fair; however, for low-income individuals staying with family or friends who live in public housing or who receive other government assistance, this verification process could be an issue. There are frequently restrictions regarding who may live in public housing or in households in which an individual is receiving public assistance. These regulations may prevent references from confirming the address of the accused. In addition, pretrial services inquires about and attempts to verify the accused's employment as a job is viewed as evidence of the stability of the individual. My research, in line with the literature, demonstrated that the majority of the individuals coming through bail court in both locations are without a steady or formal source of income (i.e. unemployed or engaging in informal work activities such as peddling). Individuals who are employed may not divulge their employment status to make sure their jobs are not contacted by pretrial services and alerted of their arrest. Some of the issues around collecting and verifying information by pretrial may be attributed to a general mistrust of the criminal justice system felt by marginalized populations. Those who fare worse in the processes may have little faith in a system which operates according to cultural standards of middle-class whites.

## **Conclusions**

This dissertation sought to investigate how those accused of crimes were treated at the first phase of the criminal court system in two large predominantly Black urban cities. I wanted to examine whether a structure in the South (i.e. Atlanta) was actually more punitive than one in the North (i.e. Philadelphia). Specifically, I wanted to examine how extra-legal variables impacted decision making at this phase, as well as gaining insight into the social-organizational structures of the bail systems in these two cities. The disproportionate representation of minorities at other phases in the criminal court process has been a frequent topic of discussion in the literature for some time, while bail has received far less attention. This research was important to understand this phase in order to protect the rights of the accused, as well as serve the purposes of bail. Examining how these goals could be achieved justly was one motivation for this research. The quantitative piece provided limited insight into how these process work; however, the qualitative analysis was immensely useful in that it provides additional understanding on what variables impacted the processes and structures of bail. By coupling the voices and experiences of the courtroom workgroup with observations and quantitative analysis, I sought to provide a comprehensive picture of this first phase.

The research was impacted by a number of limitations. Specifically, the limited time available in both cities prevented me from including the accused in the study. The experiences and voices of the accused, particularly those most marginalized by the bail systems in these two cities – young Black men – would have certainly resulted in a more powerful and thorough examination of the broader implications of the organizational structure of bail. Interviews with this group will be included in future bail research in these two cities. In addition, restricted access to courtroom workgroup members in Philadelphia reduced my ability to provide a

comprehensive picture of bail operations in that city. Having been allowed to interview only one magistrate may have produced a narrow view of bail operations in Philadelphia which may not be held by other members of the judiciary. However, because Philadelphia's bail system has been so frequently studied, gaining access to members of the judiciary will likely be an ongoing issue in relation to my research on bail. On the whole, the study would benefit from additional courtroom observations which would expand the data set and allow for more extensive statistical analysis to predict bail recommendations and decisions (e.g. OLS and logistic regression). Future research will include further courtroom observations using a "bail courtroom ethnography" document developed from the data set of my ethnographic data collection.

In answering my research questions, I determined that although disproportionate representation and unequal outcomes in relation to extra-legal variables occurred at this phase like the other phases of the criminal court system, these variables did not tell the whole story of these processes. A number of other legal variables and influences both inside and outside the courtroom impacted these systems as well. Many of these factors have been traditionally included in the discourse around bail; however, the presence and impact of many of them have been overlooked in the examinations of bail processes. More significantly, I examined how these variables and influences illustrated and reinforced the underlying organizational structures of the bail systems in these two cities. These structures are critical in understanding how and why bail outcomes occur. Specifically, in both Atlanta's traditional and punitive structure and Philadelphia's non-traditional and financially motivated structure, some groups fare worse than others at this phase. However, we cannot examine these outcomes simply through the singular lenses of extra-legal variables; we must instead understand how these variables and others function within the larger bail structures. Only then can we begin to comprehensively evaluate

these systems, understand their implications, and propose meaningful change to reverse the inequitable trends which we see.



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## **Appendix**

### **IRB LETTER**



RESEARCH OFFICE

210 Hulihan Hall  
University of Delaware  
Newark, Delaware 19716-1551  
Ph: 302/831-2136  
Fax: 302/831-2828

DATE: December 13, 2011

TO: Brian Starks  
FROM: University of Delaware IRB

STUDY TITLE: [204973-2] A Bail Of Two Cities: Atlanta v. Philadelphia. The First Phase of the Criminal Court Process

SUBMISSION TYPE: Continuing Review/Progress Report

ACTION: APPROVED

APPROVAL DATE: December 13, 2011

EXPIRATION DATE: December 14, 2012

REVIEW TYPE: Expedited Review

REVIEW CATEGORY: Expedited review category # 8

Thank you for your submission of Continuing Review/Progress Report materials for this research study. The University of Delaware IRB has APPROVED your submission. This approval is based on an appropriate risk/benefit ratio and a study design wherein the risks have been minimized. All research must be conducted in accordance with this approved submission.

This submission has received Expedited Review based on the applicable federal regulation.

Please remember that informed consent is a process beginning with a description of the study and insurance of participant understanding followed by a signed consent form. Informed consent must continue throughout the study via a dialogue between the researcher and research participant. Federal regulations require each participant receive a copy of the signed consent document.

Please note that any revision to previously approved materials must be approved by this office prior to initiation. Please use the appropriate revision forms for this procedure.

All SERIOUS and UNEXPECTED adverse events must be reported to this office. Please use the appropriate adverse event forms for this procedure. All sponsor reporting requirements should also be followed.

Please report all NON-COMPLIANCE issues or COMPLAINTS regarding this study to this office.

Please note that all research records must be retained for a minimum of three years.

Based on the risks, this project requires Continuing Review by this office on an annual basis. Please use the appropriate renewal forms for this procedure.