COMMENT

PRE-TRIAL RELEASE OF INDIGENTS IN THE UNITED STATES

By NORVIE L. LAY*

I. Introduction

A. Right to Bail in the United States

1. *Federal System*

The Constitution of the United States does not contain an absolute guarantee that a person arrested on a criminal charge shall, upon his posting of a bond, have a right to be released from custody prior to his trial. In fact the Constitution as originally adopted did not encompass bail provisions of any nature. Concern at this omission, together with the failure to specifically mention other rights and freedoms deemed essential to the preservation of liberty, led to the drafting of ten amendments to the Constitution.[1] The proposed amendments were submitted to the individual states in 1789 and were ratified in 1791. It was not until the ratification of these amendments that bail was specifically mentioned in the Constitution, and then only to the extent that the Eighth Amendment provided that 'Excessive bail shall not be required'; an absolute constitutional right to bail was withheld.

However, prior to the adoption of the Eighth Amendment, Congress in 1789 enacted the Judiciary Act. This provided that when a person was arrested in a criminal case, 'bail shall be admitted, except where the punishment may be death'.[2] Even where the death penalty was applicable, the Judiciary Act gave the court a discretionary power to release the defendant on bail. In exercising its discretion the court was instructed to consider the nature of the offence and all the circumstances thereof, the evidence available in the case and the usages of the law.[3] The same elements contained in this early Judiciary Act are to be found today in the Federal Rules of Criminal Procedure where it is stated that:

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1 These ten amendments are commonly referred to as the 'Bill of Rights'.

2 1 Stat. 73, 91 (1789).

3 *Ibid.*

> . . . a person arrested for an offense not punishable by death shall be admitted to bail. A person arrested for an offense punishable by death may be admitted to bail by any court or judge authorised by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.[4]

Hence the distinction between non-capital and capital offences determines an accused's right to bail: in the first the offender 'shall be' admitted to bail whereas in the latter he 'may be' so released.

2. *State Systems*

All fifty states have some provisions enabling an arrested person to be released from custody via the bail system. The great majority of these are guarantees in the form of state constitutional mandates,[5] the remainder are contained in statutes promulgated by the various state legislatures.[6]

Since each state has the inherent power to adopt constitutional or statutory provisions which are not in conflict with the principles enunciated by the United States Constitution, it is only natural that the form of the bail provisions is not uniform from state to state.

Some states have taken an extremely narrow approach and have limited the 'right of pretrial bail to only those persons detained on misdemeanor charges, with no provision for those accused of committing felonies'.[7] A second group of states has adopted provisions similar or identical to those in effect in the federal system, *e.g.*, 'all prisoners shall be bailable by sufficient securities, unless for capital offenses when the proof is evident or the presumption great'.[8] A third category makes all persons bailable except those who are accused of murder or treason.[9] This is more liberal than the federal rule since persons accused of other capital offences 'shall' instead of 'may' be bailable. A fourth type of bail provision has been adopted in some states whereby the power to grant bail is dependent upon the nature of the court before which the accused is appearing. Such a state is North Carolina, where the statute provides that:

> Officers before whom persons charged with crime, but who have not been committed to prison by an authorized magistrate, may be brought, have power to take bail as follows: 1. Any justice of the Supreme Court, or a judge of a superior court, in all cases. 2. Any clerk of the superior court, any justice of the peace, or any chief magistrate of any incorporated city or town, in all cases of misdemeanor, and all cases of felony not capital.[10]

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[4] Fed. Rules of Crim. Proc., S.46 (a)(1).

[5] For example, see Ky. Const., S.16 and Ohio Const. Art. 1, S.9.

[6] See N.H.Rev. Stat. Ann., S.597:1(1955).

[7] See Ga. Code Ann. S.17-901 (1953) where it is stated that '. . . at no time either before the commitment court, when indicted, after a motion for a new trial is made, or while a bill of exceptions is pending, shall any person charged with a misdemeanor be refused bail'.

[8] Ky. Const., S.16.

[9] Michigan is in this group and her constitution provides that '. . . all persons shall, before conviction, be bailable by sufficient sureties, except for murder and treason when the proof is evident or the presumption great'. Mich. Const., Art. II, S.14.

[10] N.C. Gen. Stat., S.15-102 (1953).

Such a statute is closely aligned to the principles under which bail was granted at common law.[11] The present lack of uniformity was summarized in a recent report to the National Conference on Bail and Criminal Justice as follows:

> Thirty-nine states guarantee a right to bail before conviction in non-capital crimes; four states limit the power to deny bail to treason and murder cases; three states grant an absolute right to bail only in misdemeanour cases; four states allow judges almost complete discretion, in accord with the common law.

B. Amount of Bail

The mere fact that certain crimes and offences are made bailable does not ensure the pretrial release of every person arrested on these charges. The accused must still meet the requirements of the bail bond, *i.e.*, produce the stated amount of bail money set by the court.

In what amount should the bail bond for each defendant be set? Aside from the 'Excessive Clause', the United States Constitution contains no guidelines for the determination of this question. Again one must look to the federal statutes to find that 'if the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the commisssioner or court or judge or justice will ensure the presence of the defendant'.[12] In setting the amount needed to ensure the accused's presence, the court must give due regard to the nature and circumstances of the offence charged, the weight of the evidence against him, the financial ability of the defendant to give bail and the character of the defendant.[13] These are the four determining factors.

After the trial court has exercised its discretion in fixing bail, appellate courts will give weight to its findings and appear to be reluctant to find an abuse of that discretion. In *Forrest* v. *United States*[14] the defendant claimed that his bail was excessive. The appellate court, in reviewing the contention that the lower court erred, decided that 'in determining how much bail an accused shall be required to give, there is considerable latitude between a figure which is clearly inadequate and one which is clearly excessive'.[15] Therefore, 'when a trial judge, in fixing the amount of bail, has within these extremes exercised his best judgment, there is no logical reason . . . why an appellate court should substitute its judgment for his'.[16] This line of reasoning was bolstered by the concluding argument that 'problems relating to the giving of bail pending trial are essentially for trial judges who, by experience and opportunity for taking evidence and ascertaining facts, are better able to deal with such matters than are appellate courts'.[17]

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11 Freed and Wald, *Bail in the United States*, 1964, p.2, n.8.
12 Fed. Rules of Crim. Proc., S.46(c).
13 *Ibid.*
14 203 F.2d, 83 (8th Cir. 1953).
15 *Ibid.*, at p.84.
16 *Ibid.*
17 *Ibid.*

Even though the trial court has this great degree of latitude in setting bail, 'the judge is not free to make the sky the limit'.[18] If after reviewing the lower court's findings it is decided that bail was set at a figure higher than an amount which is reasonably calculated to produce the accused in court at the appointed time, a reduction will be ordered. Otherwise the Constitutional prohibition against excesssive bail would be violated.

A good case to show how an appellate court approaches the question of excessive bail is *United States* v. *Weiss*.[19]. Here the defendant was indicted for violating a section of the Smith Act which required the registration of members of the Communist Party. The trial court set his bail at $35,000. In reviewing the discretionary power of the trial judge, the court compared this figure with the amount of bail that had been set in other cases on the then current criminal calendar which carried the same maximum punishment as the case at bar. It was ascertained that the highest bond was $5,000. Likewise, the petitioner showed that others charged with the very same offence had been released from confinement on a $5,000 bond. In rebuttal the Government established that in four other Smith Act membership cases throughout the United States the bonds had not been uniform. Two had been set at $35,000, one at $30,000 and one at $20,000. The court decided that a reasonable amount of bail would range from $5,000 to $10,000 depending on the individual case. However, in deferring to the view of the trial judge that there were special circumstances which reasonably called for a higher than normal bond, the amount was fixed at $15,000. Although the bond was here reduced, it is clear that the discretionary power of the lower court was greatly respected.

Irrespective of what else may be said about the amount of bail in a particular case, it is essential that 'the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant',[20] and 'the traditional standards . . . are to be applied in each case to each defendant'.[21] This permits a lot of variation.

The state courts are often plagued with the same problem since, although several of their constitutions forbid excessive bail,[22] the amount of bail is 'left to sound judicial discretion, depending upon the nature and circumstances of each case'.[23]

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18 *Stack* v. *Boyle*, 342 U.S. 1, 8 (1951).

19 233 F. 2d 463 (7th Cir. 1956).

20 *Stack* v. *Boyle*, 342 U.S. 1, 5 (1951).

21 *Ibid.*

22 For example, see Conn. Const., Art.I, S.13; Fla. Declaration of Rights, S.8; Mich. Const., Art.II, S.15; Miss, Const., Art. 3, S.19; Ohio Const., Art.I, S.9.

23 *State* v. *Petrucelli*, 37 N.J.Super. 1, 6, 116 A.2d 721, 723 (1955).

II. Purpose of Bail

Whatever may have been the reason for freeing prisoners when bail originated in medieval England,[24] its prime purpose in the United States is well established today. The bail stututes in this country were 'framed upon the theory that a person accused of crime shall not, until he has been finally adjudged guilty in the court of last resort, be absolutely compelled to undergo imprisonment or punishment'.[25] In fact it has been held that the only reason for detention or confinement pending final disposition is to secure the accused's presence in court when desired, and if this can be done by requiring bail, there would seem to be no reason for refusing or denying such relief.[26] In this respect the purpose of bail is very definitely interrelated with the amount of bail.[27]

Furthermore, the United States Supreme Court has held that the traditional right to pretrial release permits the accused to make an unhampered preparation of his defence.[28] The court emphasized that 'unless this right is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning'.[29] Mr. Justice Jackson summarized the purpose of bail as follows:

> The practice of admission to bail, as it has evolved in Anglo-American law, is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. On the contrary, the spirit of the procedure is to enable them to stay out of jail until a trial has found them guilty. Without this conditional privilege, even those wrongly accused are punished by a period of imprisonment while awaiting trial and are handicapped in consulting counsel, searching for evidence and witnesses, and preparing a defense.[30]

It has sometimes been argued that bail should be used to keep those persons incarcerated who might be disposed to commit other offences if they are released. The courts have for the most part disagreed with this use of bail. Their reluctance to resort to such a procedure may be ascribed to the feeling that 'imprisonment to protect society from predicted but unconsummated offences is so fraught with danger of excesses and injustice'.[31] In any event, it would be impossible to reconcile this idea with the traditional American view of the purpose of bail.

Analogous to the reasons for bail in the federal system, its primary function in the individual states 'is practical assurance that defendant will attend upon the court when his presence is required',[32] and to

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24 Freed and Wald, *Bail in the United States*, p.1.

25 *Hudson* v. *Packer*, 156 U.S. 277, 285 (1894).

26 *McKnight* v. *United States*, 113 F. 451 (6th Cir. 1902).

27 *Supra*, S.I(B).

28 *Stack* v. *Boyle*, *supra*.

29 *Ibid.*, at p.4.

30 *Stack* v. *Boyle*, 342 U.S. 1, 8 (1951).

31 *Williamson* v. *United States*, 184 F.2d 280, 282 (2nd Cir. 1950).

32 *In re Brumback*, 46 Cal.2d 810, 813, 299 P.2d 217, 219 (1956).

relieve the accused from imprisonment and punishment before he has been convicted.[33] A further reason for pretrial release is to relieve the state of the burden of keeping the prisoner before his conviction.[34]

III. Bail for the Indigent

As seen in previous sections, the ability of an accused to obtain pretrial release on bail is dependent upon his being able to post the amount of security required by his bond. Ordinarily this may be done by the pledging of real property or by the depositing of money or other sufficient securities.[35] This security may be furnished either by the defendant or by a third party. However, it has been suggested that as a practical matter, 'in the everyday administration of criminal justice in American courts, the legal right of an accused person to bail can usually ripen into pretrial freedom only upon the consummation of a commercial bail transaction'.[36]

There are no special constitutional principles with respect to bail for the indigent which will alleviate his problem. The general prohibition against excessive bail applies with equal force to them as it does to all other persons. Hence it is likely that the impoverished defendant may have to sit in jail until the date of his trial simply because he doesn't have the necessary money to obtain the services of a bondsman. This may be the case even where he is accused of some minor offence.

Such a result may be questioned via two avenues. First, does this destroy the purpose of the bail system, *i.e.*, having the accused in court on the date set for his appearance? Solely from a literal interpretation, it is quite obvious that it does not since the defendant is certain to be there. On the other hand, if it can be fairly accurately ascertained from additional factors[37] that the offender is likely to appear if he is released on his own recognizance, no security being required, it would appear that the logic of pretrial release is being stifled unless the indigent defendant is permitted this privilege.

The argument against this has been that a person who has had to give security for his release is more likely to appear than one who has not. This may be correct if it is his own money or property, but it doesn't necessarily follow that it remains true when the accused is released on a bond obtained for a fee, from a professional bondsman. The courts are beginning to recognize this. In *Pannell* v. *United States*[38] it was admitted that where a professional bondsman is involved he, and not the court, will determine the real stake of the

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33 *Green* v. *Petit*, 222 Ind. 467, 54 N.E.2d 281 (1944).

34 *State* v. *Wynn*, 356 Mo. 1095, 204 S.W.2d 927 (1947).

35 For the type of security required in the federal system, see Fed. Rules of Crim. Proc., S.46(d). For an example of a state requirement, see Ky Const., S.16.

36 Wald and Freed, *Bail in the United States*, p.3.

37 These additional factors will be discussed *infra*.

38 320 F.2d 698 (D.C. Cir. 1963).

accused. It is the bondsman who decides whether to require collateral for the bonds and he will also determine the amount. If collateral is required, the likelihood of the defendant appearing may be related to the amount of the bond. If collateral is not required, then the accused 'has no real financial stake in complying with the conditions of the bond, regardless of amount, since the fee paid for the bond is not refundable under any circumstances'.[39] The court added that 'it does not decide—or even know—whether a higher bond for a particular applicant means that he has a higher stake'.[40] It then concluded that if the court doesn't know, it shouldn't 'assume that it does'.[41]

Congress has also sanctioned the idea that the financial ability of the accused to give bail is not to be the sole determining factor in setting the amount of bond. The Federal Rules of Criminal Procedure lists this as only one of four factors to consider, the other three being the nature of the defence, the weight of the evidence and the character of the accused.[42] So if some other test can be designed to predict with a relatively high degree of certainty whether a particular person will return for his trial, there would seem to be little justification against its use. In fact the Rules specifically provide that 'in proper cases no security need be required'.[43]

It must be admitted that the most carefully devised test for release of indigents on their own recognizance will not ensure that all of them will appear for trial, but this alone is not a sufficient justification for refusing to try it. It is common knowledge that security bonds are not one-hundred per cent. effective but are often forfeited. Bail always involves a risk that the defendant will not return, but this 'is a calculated risk which the law takes as the price of our system of justice'.[44] The Supreme Court has held that Congress likewise anticipated that bail would enable some escapes, because it provided for the forfeiture of the security if the accused fails to appear.[45]

Therefore, if as high a percentage of those persons released on their own recognizance appear as do those who post security for their bond, release of indigents who qualify would free more persons from punishment prior to conviction. And this would not distort the purpose of bail but would contribute towards its true goal.

The second way to question the equal application of the excessive bail provision is from a constitutional standpoint. The Supreme Court has held that some of the functions of bail are to prevent a person from being handicapped in the preparation of a defence, in searching for evidence, in locating witnesses, and in obtaining and consulting with

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39 *Ibid.*, at p.702 (Bazelon, C.J. concurring in part and dissenting in part).

40 *Ibid.*

41 *Ibid.*

42 Fed. Rules of Crim. Proc., S.46 (c).

43 Fed. Rules of Crim. Proc., S.46 (d).

44 *Stack* v. *Boyle*, 342 U.S. 1, 8 (1951) (Jackson J., concurring opinion).

45 *Ibid.* The forfeiture provision referred to by the court is Fed. Rules of Crim. Proc., S.46(f).

counsel.[46] If this is so, has not the person who remains in jail merely because of his indigence been denied his liberty without due process of law as guaranteed him by the Fifth[47] and Fourteenth[48] Amendments to the United States Constitution? Likewise has not the indigent been denied his liberty without the equal protection of the law?[49]

There are no cases squarely on point, but some seventy years ago these questions were answered in the negative with respect to bail pending an appeal.[50] As late as 1950 the United States Court of Appeals held that 'a person arrested upon a criminal charge, who cannot give bail, has no recourse but to move for trial'.[51]

The same question was before the court in the recent case of *Bandy* v. *United States*[52] where the accused petitioned for release on his own personal recognizance, reciting that he was unable to give security for his bond. The court referred to the assumption that the threat of forfeiture of one's property serves as an effective stimulant to produce the accused in court, but added that 'to continue to demand a substantial bond which the defendant is unable to secure raises considerable problems for the equal administration of the law'.[53]

The court continued:

> It would be unconstitutional to fix excessive bail to assure that a defendant will not gain his freedom . . . Yet in the case of an indigent defendant, the fixing of bail in even a modest amount may have the practical effect of denying him release . . . The wrong done by denying release is not limited to the denial of freedom alone. That denial may have other consequences. In case of reversal, he will have served all or part of a sentence under an erroneous judgment. Imprisoned, a man may have no opportunity to investigate his case, to co-operate with his counsel, to earn the money that is still necessary for the fullest use of his right to appeal.[54]

The petition was denied and returned to the lower court for a hearing on all the facts. Six months later it was heard again by the same justice who concluded that further reflection had led him to believe that no man should be denied release merely because of his indigence, but is 'entitled to be released on "personal recognizance" where other relevant factors make it reasonable to believe that he will

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46 *Stack* v. *Boyle, supra.*

47 The Fifth Amendment is a bulwark against federal action and provides that 'No person shall . . . be deprived of life, liberty, or property, without due process of law . . .'

48 The Fourteenth Amendment prohibits similar action by the states: '. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws'.

49 *Ibid.*

50 *McKane* v. *Durston,* 153 U.S. 684 (1893).

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

52 81 S.Ct. 197 (1960).

53 *Ibid.*

54 *Supra,* n. 52, at p. 198.

comply with the orders of the court'.[55] While this case concerned post-trial bail, the same reasoning should be applicable to pretrial detention.

Diverting for a moment to another area where indigents have been involved, we find that the Supreme Court has recently held that a person accused of a non-capital offence is entitled to be represented by counsel. If he is too poor to engage an attorney the court is under an affirmative obligation to appoint one for him. The failure to furnish counsel amounts to a denial of due process as guaranteed by the Fourteenth Amendment.[56] The court felt this to be essential to fundamental justice since

> . . . from the beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law.[57]

Prior to this decision, a state was required to furnish an accused with counsel only when he was charged with a capital crime,[58] but not in a non-capital case.[59] Perhaps this may be some indication of the line of reasoning that is to come in the future as regards bail for indigents. The fact that the release of indigents may not be constitutionally required should not be taken to mean that this is never done. Several judges, aware of the inequities and the inconvenience of pretrial detention, have on their own initiative released an accused on his recognizance if satisfied from all the circumstances that he will appear for trial.

State legislation has been enacted allowing release of a person on his own recognizance if the court is of the opinion that he will appear for trial,[60] but this is a discretionary power and does not give the indigent a right to release. In a recent session of Congress, legislation seeking to revise the existing federal bail laws was introduced. The amendment added the following to the Federal Rules of Criminal Prodecure:

> (a) No person shall be denied bail solely because of the financial inability of such person to give bond or provide collateral security to secure his appearance before any court of the United States or any United States Commissioner.
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> (b) Any indigent person in custody before a court of the United States or a United States Commissioner shall, if otherwise eligible for bail and except for good cause shown to the contrary, be admitted to bail on his personal recognizance subject to such conditions as the court or commissioner may

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55 *Bandy* v. *United States*, 82 S.Ct. 11, 13 (1961). Both opinions in the *Bandy* case were written by Mr Justice Douglas, acting as Circuit Justice. Nevertheless, release was again denied because of a procedural requirement. Douglas J. finished the decision by commenting, 'Troubled as I am that a man can be held in jail for many months solely because he is an indigent, I must work within the limitations . . .' (p.14).

56 *Gideon* v. *Wainwright*, 372 U.S. 335 (1962).

57 *Ibid.*, at p.344.

58 *Powell* v. *Alabama*, 287 U.S. 45 (1932).

59 *Betts* v. *Brady*, 316 U.S. 455 (1942).

60 Ill. Rev. Stat., c. 38, S.110-2.

> reasonably prescribe to assure his appearance when required. Any person admitted to bail as herein provided shall be fully apprised by the court or commissioner of the penalty provided for failure to comply with the the terms of his recognizance, and upon a failure of compliance a warrant for the arrest of such person shall be issued forthwith.[61]

In introducing this bill, the Senator pointed out that he was not alleging that the present monetary bail system was unconstitutional. The purpose of the bill was 'to ameliorate the inequity which existing bail laws place on the indigent in comparison with those who are financially secure'.[62]

IV. Programmes for Indigent Defendants

Criticism of the bail system appears to have been mounting over recent years.[63] The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has taken the position that 'to the extent other factors make it reasonably likely the defendant will appear, it is both good practice and good economics to release him on bail, though he cannot arrange for cash or bonds even in small amount'.[64] Such criticism has not been limited to writers and committees. The courts have also expressed concern.[65]

This has led to the sugggested use of several alternatives to the present bail system. One is to issue a summons for the party instead of arresting him. Where this is done, the common practice has been to use the summons for traffic violations, although it is not limited to this particular offence.[66] A second alternative is to release the defendant into the custody of some third party such as an employer, minister or attorney. This has been tried in Tulsa, Oklohoma, with the attorney as third party. If the attorney does not produce his client in court, his (the attorney's) name is stricken from the list of those eligible to participate in the programme.[67] A third alternative is to release the prisoner during the daytime. This allows him to continue his employment and to support his family. This has proved successful where used and saves the state maintenance money.[68] A fourth alternative has been to give credit for the amount of pretrial detention toward the sentence imposed upon the defendant. If he is subjected to

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61 88th Cong., 2d. Sess. (1964).

62 Cong. Rec. 88th Cong., 2d Sess., 110 Cong. Rec. 10512 (1964).

63 'Bail, An Ancient Practice Re-examined', 70 *Yale L.J.* 966 (1961).

64 Taken from an address delivered by Earl Warren, Chief Justice of the United States, to the National Conference on Bail and Criminal Justice on 17 May 1964 in Washington D.C.

65 *Pannell* v. *United States,* 320, F.2d 698, 699 (D.C. Cir. 1963); 'The effect of such a system is that the professional bondsmen hold the key to the jail in their pockets. They determine for whom they will act as surety—who in their judgment is a good risk. The bad risks, in the bondsmen's judgment, *and the ones who are unable to pay the bondsmen's fees remain in jail.* The court and the commissioner are relegated to the relatively unimportant chore of fixing the amount of bail'.

66 Murphy, 'Police Commissioner Describes Summons in Lieu of Arrest in New York', 4 *The Municipal Court Review,* 21 (no. 2, 1964).

67 Wald and Freed, *Bail in the United States, supra,* p.76.

68 *Id.,* at p.77.

a fine, the credit is given in terms of a stated amount of money per day for pretrial imprisonment. This helps those convicted but is of no importance to the innocent, and everyone is presumably innocent until convicted.

Other suggestions range from separate detention facilities to release of indigents on their own recognizance, *i.e.*, allowing them to sign their own bonds without requiring security. This method has perhaps been the most successful. The pioneer in this area was the Manhattan Bail Project which operates in New York City.[69] During the first thirty months in which the project was in operation, 2,300 persons were released on their own recognizance upon the recommendation of the staff. Most of these were indigent defendants and ninety-nine per cent. returned to court on the appointed day. This compared favourably with the ninety-seven per cent. return for those freed on bail during the same period of time.[70] As an outgrowth of this project, similar systems are now in force in other cities, one of which is in Louisville, Jefferson County, Kentucky.

V. The Jefferson County, Kentucky Bail Bond Project

In July of 1964, the Jefferson County government made an appropriation[71] for the organization of a six-month bail bond project for indigents in Jefferson County, Kentucky. The type of project adopted was one wherein an indigent prisoner would be released on his own recognizance after having satisfied the court that he would appear for trial.[72] Excluded from the operation of the project were those persons accused of capital crimes, sex offences and narcotics offences. The system was then put into effect in the Criminal Division of the Jefferson County Quarterly Court and in the Louisville City Police Court.

A. Procedure

To enable the individual judges to better evaluate the probability of an accused returning for trial, each was personally questioned with a view to establishing his stability in the community.[73] Five University of Louisville Law School students were selected to staff this part of the project. Two were assigned to each court and the fifth member, designated as chairman, was to act as co-ordinator, and to work in either court as needed. The five spend an average of sixty-five hours

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69 This was founded by the Vera Foundation, in co-operation with the New York University School of Law and the Institute of Judicial Administration. It has received grants from the Ford Foundation.

70 *Toward Justice for the Poor: The Manhattan Bail Project,* A Report by the Vera Foundation.

71 Since that date the Project has received an additional grant from the State of Kentucky.

72 This Project was adopted after discussions with the prosecuting attorneys, judges in whose courts the system would be operating, and Dean Marlin Volz and other faculty members of the University of Louisville School of Law.

73 *Infra,* S.V(B).

per week on the project and are given access to the jails to conduct the interviews there. At the conclusion of the interview and having obtained the permission of the accused, all of the information is verifield. This is done by checking court records for prior convictions, use of city directories and by contacting those persons whom the defendant has listed for references.

If the accused has the requisite number of points (to be discussed, *infra*), the staff member recommends to the judge, who originally set the amount of bail, that the accused be released on his own recognizance. The final decision and responsibility belong to the judge and, if he adopts the recommendation, the defendant signs his own bond and is released, having been told when and where to appear for his trial. As an additional measure to ensure his presence a reminder notice is sent him by the staff.

B. Criteria for Release

The Jefferson County Bail Bond Project adopted the same criteria, for determining the eligibility of the accused for release, as had been used by the Manhattan Bail Project with such a large measure of success. After being adapted to Jefferson County, the score sheet of the information taken from the questionnaire is as follows:

Points	1. *Prior Record*
2	No convictions.
1	One misdemeanor conviction.
0	Two misdemeanor convictions or one felony conviction.
−1	Three or more misdemeanor convictions or two or more felony convictions.
	2. *Family Ties (in Jefferson County)*
3	Lives with family *and* has contact with other family members.
2	Lives with family *or* has contact with family.
1	Lives with non-family person *and* gives this person as a reference.
	3. *Employment*
3	Present job one year or more.
2	Present job 4 months *or* present and prior job 6 months.
1	On and off job in either of above 2 lines, or current job, or unemployed 3 months or less with 9 months or more prior job, or supported by family.
	4. *Residence (in Jefferson County Area)*
3	Present residence one year or more.
2	Present residence 6 months or present and prior 1 year.
1	Present residence 4 months or present and prior 6 months.
	5. *Time in Jefferson County*
1	Ten years or more.
	6. *Discretion of Interviewer*
1	Positive.
0 or −1	Negative.

To be recommended for release an accused must have a Jefferson County address where he can be reached and a total of five points from the above listed categories.

C. Results of the Programme

At present the project has not been in effect long enough to make any accurate prediction as to its success except that those connected with it are impressed that no one has yet failed to appear for trial. The staff members will compare the results with a control group which have given security for their bonds. From this will be gauged the success of the project and whether there are enough indigent defendants in the Jefferson County Area to justify the continuance of the programme.

D. Other Benefits

Aside from the very important benefit of not confining a person before his conviction, there are other benefits to be gained from the project. These accrue both to the accused and to the community. First, the retention of a job. If the accused is presently working, pretrial release will enable him to continue his employment. This will enable him to earn money with which to defend his case. If he is acquitted, fined or placed on probation, it is assumed he will still have his job, and will not have the effort and expense of locating another. The employer is spared the same problem.

Secondly, the preservation of the family if the accused is married: whatever may be the feeling of the wife and family towards the husband, it will not be enhanced by his spending several weeks or perhaps months in jail awaiting trial. The ill feeling might be accentuated by the wife now having to look for employment or to rely upon welfare benefits in order to support herself and her family. The time of pretrial detention could be more profitably spent in caring for the family.

Thirdly, if the husband remains in jail and the wife and children have no other means of support, she may receive welfare benefits from the county. Having the husband out of jail would prevent this, thus resulting in a financial saving to the community.

Fourthly, the county will be spared the expense of clothing, housing and feeding an accused who remains in detention prior to his trial.

These four factors alone would seem to justify the economic outlay necessary to the successful operation of an indigent bail bond project.

VI. Conclusion

It would be impossible to give a categorical answer whether these bail projects for indigents are the best alternatives to the presently existing bail system. However, it does appear that those established in different cities in this country are producing favourable results.[74] Furthermore, the statistical information gathered from them should be helpful in obtaining remedial legislation on both the federal and state level.

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74 *Supra*, S.IV for an example of the Manhattan Bail Project.