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Bailing Out of Bonds: The Effect of Victim/Offender Relationships and Other Factors in the Setting of Bail

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BAILING OUT OF BONDS: THE EFFECT OF VICTIM/OFFENDER RELATIONSHIPS AND OTHER FACTORS IN THE SETTING OF BAIL

by

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ABSTRACT

BAILING OUT OF BONDS: THE EFFECT OF VICTIM/OFFENDER RELATIONSHIPS AND OTHER FACTORS IN THE SETTING OF BAIL.

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The purpose of this study is to investigate which factors impact bail decisions made by magistrates and judges. Much of the research on this topic was done in the early 1960s and 1970s when efforts such as the Manhattan Bail Project were in full force and the decisions of magistrates had not been investigated. There has been little research which looks specifically at the effect of victim-offender relationship on the bail decision. The present research utilizes bail decisions made by judges in the General District Court of Virginia Beach, Virginia as well as Virginia Beach magistrates. The effects of offense and defendant characteristics, such as charge seriousness, prior record, use of a weapon, mental history, employment status, and victim/offender relationship on bail amounts and the "in/out" decision are measured. Analyses reveal that much of the variance in bail decisions is unexplained despite the inclusion of several legal and extra-legal variables. Use of a weapon, arrest for a violent offense and the number of charges do have significant effects on the amount of bond and whether the defendant is detained.

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CHAPTER 1

INTRODUCTION

Almost every aspect of the criminal justice process has been examined and studied by professional researchers and practitioners within the past fifty years. Perhaps the first decision made by the judicial branch is whether or not an arrested individual accused, but not yet convicted of a crime, should be released from custody prior to the criminal trial. If that person is going to be released, should a monetary bond be required to insure return for prosecution and, if so, how will an amount be determined? Research has shown that the bail decision may actually impact later judicial decision-making processes. Defendants who are released on bail prior to trial tend to receive more lenient sentences and are less likely to be convicted than those who are detained during trial (Rankin 1964; Brockett 1973). The bail decision has been the topic of many political debates, Supreme Court cases, and an array of policy development across the country in the past fifty years. This study focuses specifically on the bail decisions made by magistrates and judges in the General District Court of Virginia Beach, Virginia.

While there is some literature on the bail decisions of judges, there is very little information about the decisions made by lay magistrates. Magistrates, in contrast to professional judges, are often the gatekeepers to the judicial system in terms

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of making the initial bail decision. At least 43 states in the U.S. use "lay judges" or magistrates within their court systems (Diamond 1990), but it has been noted "that committing magistrates often misunderstand the purpose of bail and the criteria for determining the proper amount" (Ares, Rankin, and Sturz 1963:70-1).

Perkins, Stephan, and Beck (1995) cite the number of unconvicted adult jail inmates in 1993 at over 200,000. Of the 51,000 federal felony defendants in 1992, 63 percent were released before trial while 37 percent were detained until trial (Reaves and Perez 1994). Thus, everyday thousands of incarcerated defendants are awaiting a bail hearing, being denied bail, or not being able to make bail. Critics of pretrial detention view it as a violation of the constitutional right to be presumed innocent until proven guilty (Goldkamp 1979). The eighth amendment, which provides protection against *excessive* bail, has been interpreted by many as a person's *right* to bail except when the death penalty is applicable. "Although bail has obvious uses in preventing an accused criminal who cannot provide bail from repeating his presumed transgression, in theory the only purpose of bail is to guarantee the appearance of the accused at the proceedings against him" (Kaplan, Skolnick, and Feeley 1991:355). The emphasis on bail being used only as a means to insure appearance at trial became the focus of widespread attention in the 1960s when there was a growing concern for the increasing number of defendants who could not make bail and sat in jail awaiting trial.

In 1964, the Vera Institute of Justice conducted the Manhattan Bail Project which looked at jail overcrowding in New York City due to large numbers of defendants who could not meet even minimal bail requirements. Detainees were interviewed about their family, community ties, employment status, educational attainment, and prior record. If

the information presented an image of a fairly stable, albeit impoverished individual, a recommendation was made for the defendant to be released on his or her own recognizance (ROR). Less than 2 percent of those on ROR failed to appear in court -- a rate comparable to those posting bail. The Manhattan Bail Project was deemed a success (Schachter 1991).

Evidence from studies such as this led to the Bail Reform Act of 1966 which urged that defendants be released with no financial obligations in federal jurisdictions. A set of guidelines was created to help federal judges determine what level of bail was appropriate, if indeed bail was to be set. Guideline criteria included the nature of the crime, the weight of evidence, prior record of failing to appear, family and community ties, and employment status (Beaudin 1970/1971). Any case in which a defendant was incarcerated prior to trial was subject to review. If the defendant was deemed fit for release but was not released, the judge had to put in writing the reasons for detaining the defendant (Kaplan et al. 1991).

State courts soon followed the example set at the federal level by devising their own bail reform policies. However, ten years after the Manhattan Bail Project, 40 percent of defendants were still detained due to inability to meet the bail amount set. "Despite such herculean efforts, the Bail Reform Act failed to prevent a substantial percentage of defendants from continuing to be detained before trial" (Kaplan et al. 1991:363).

Public attitudes toward criminals and their civil liberties have changed since the liberal and rehabilitative focus of the 1960s and 1970s. The 1980s began a new wave of the "war on crime" which strategically focused on the amount of crime committed by defendants out on bail. Nagel (1990) reported that as many as 35 percent of defendants

on bail were re-arrested for a new offense before trial. He further described the emerging literature that "emphasizes the costs to individuals of denying bail to such an extent that it ignores or minimizes the costs to society of granting bail" (1990:90).

This change in philosophy from the 1960s to the 1980s resulted in the Federal Bail Reform Act of 1984. The Act focused on the safety of the general public, victims and witnesses. The earlier Bail Reform Act of 1966 was seen as a failure for not addressing these issues (Ryan 1993). The new Act stated that federal judges could deny bail for offenses involving a firearm or drugs, crimes of violence, or crimes with a sentence of ten years or more. State courts have again followed the federal example by allowing the "dangerousness" of the defendant to be a criterion in determining pre-trial release decisions.

Despite the passage of the 1984 Act, judges still hold various decision-making philosophies that may conflict, especially if one attempts to balance a person's right to bail and due process with the safety of others. Judges must consider the likelihood of the defendant returning to face the charges against him or her, as well as the possibility of further crime being committed by persons released prior to trial. Judges, thus, "have the very real difficulty of applying a contradictory set of principles in concrete circumstances" (Nagel 1990:92).

Within the guidelines set by the various Bail Reform Acts and Supreme Court cases, judges have tremendous discretion in making bail decisions. "Although the discretion of judges to detain and grant bail has been restricted by decisions about the constitutional rights of defendants, judges still retain considerable discretion over whether defendants shall be released on their own recognizance, the amount of bail, and their

detention awaiting trial" (Reiss 1974:68). Sometimes judges evade the formal requirements of the Bail Reform Act of 1984 which calls for a "dangerousness hearing" to determine if the defendant is threatening enough to allow preventive detention. A person perceived to be a threat to the community, witnesses, or the victim could be held without bail. It has been noted, however, that judges may set bail high enough to be beyond the financial reach of the defendant in order to avoid having to go through the hearing process (Kaplan et al. 1991). Research shows that extra-legal factors often influence judicial bail decisions. Exactly which characteristics of the criminal and the victim influence judicial discretion are still open to empirical inquiry.

The following chapter explores the theoretical and research literature on judicial discretion in bail decisions. Legal and extra-legal factors that have repeatedly been discovered to influence these decisions are also discussed. The material presented in the next chapter lays the foundation for studying the following research questions: "What factors related to the defendant and offense influence bail decisions?" and "Do those offenders who know their victim(s) receive more lenient bail terms?".

CHAPTER 2

LITERATURE REVIEW

Both judges and magistrates have a wide range of discretion when it comes to making bail determinations. Most states, however, have established guidelines to be considered by judges and magistrates when making bail decisions. Such guidelines explicitly spell out which criteria may be used when setting bail for a defendant. In the Commonwealth of Virginia, including the city of Virginia Beach, the focus of the present study, the following factors related to the defendant legally may be considered when setting bail: nature of the charge, the probability of conviction or weight of the evidence, prior record, prior record of failing to appear in court, the length of residence in the community, family ties, employment history, available financial resources, character, and the general risk of non-appearance (Goldkamp 1985). Research elsewhere has shown that many of these criteria do not affect judicial discretion and that other factors affect judges' decisions (Goldkamp and Gottfredson 1979; Bock and Frazier 1977). Various theories have tried to explain the decisions of judges.

THEORETICAL FRAMEWORKS FOR UNDERSTANDING JUDICIAL DISCRETION

Causal Attribution

Many theories try to explain why judges make the decisions that they do and how their decisions effect other areas of the criminal justice system. Albonetti (1991), for example, integrates the structural organizational approach and the causal attribution

approach to examine judicial discretion. The structural organizational approach focuses on rational choice models of decision making. A person needs to know all of the possible information and outcomes for a particular situation in order to make a truly rational decision. However, one rarely has all of the relevant information for a truly rational decision. "In the situation of having incomplete knowledge, the actor attempts to reduce uncertainty by relying upon a rationality that is the product of habit and social structure" (Albonetti 1991:248-9).

Further, judges utilize certain causal assumptions to avoid uncertainty in their sentencing. Judges often rely on decisions made by others during the case, such as the arresting officer, prosecutor, or probation officer in order to determine the proper sentence. Albonetti (1991) contends that sentencing disparity or discrimination emphasized by conflict and labeling theorists may be due to "judicial attempts to achieve a 'bounded rationality' in sentencing by relying on stereotypical images of which defendant is most likely to recidivate" (1991:250).

The structure of the judicial system, like many other organizations with a hierarchy of authority, the division of labor and lines of communication, help to decrease uncertainty by creating patterned responses. "Decision makers seek to achieve a measure of rationality by developing 'patterned responses' that serve to avoid, or at least, reduce uncertainty in obtaining a desired outcome" (Albonetti 1991:249). These patterned responses help to decrease uncertainty and increase the perception of rationality of the decision-making process.

Judges attempt to decrease the uncertainty associated with predicting future criminal acts of an individual by using patterned responses when setting bail. The history

of bail reform policy has given judges patterned responses to apply when determining bail. Uncertainty associated with predicting the criminal activity of the defendant while out on bail was high in the 1980's due, in part, to the emergence of crack cocaine and the "war on crime." The use of background factors, such as family ties and education, as well as offense characteristics, such as the use of a weapon and involvement with drugs, became the basis for guiding patterned responses for judges after the passage of the 1984 Bail Reform Act. Unfortunately, when determining bail, many judges cannot rely on decisions made earlier in the process as the bail decision is one of the first decisions to be made, yet later decisions may be based on the bail decision. Judges in Virginia Beach, however, can rely on the decision made by the magistrate at the initial appearance. Magistrates who set bail at initial appearance have no prior decision-making to rely on other than that of the police who make the arrest.

Kelley's (1973) theory of logical attribution in which the criminal act is examined in terms of "consistency," "consensus," and "distinctiveness" might be applied to judges. Fontaine and Emily (1978:324) further explain Kelley's model as follows:

> For example, suppose a defendant (the actor) strikes (the event) another person (the stimulus) and we find out that the defendant has struck that person before (consistency), that others have struck that person (consensus), and that the defendant does not strike other people (distinctiveness); then according to Kelley's model attribution should be to some stable property of the other person (e.g., he or she is a threatening or abusive person) and one might consider the act one of self-defense.

However, if others do not strike the victim (low consensus) and the defendant has a history of violence towards others (low distinctiveness) then the act is attributable to the aggressive or criminal nature of the defendant who is likely to receive a tougher sentence

or higher bail. This theory bases judicial decision-making on the prior record of the defendant as well as characteristics of the victim.

Routinization, Precedent, and Courthouse Community

Myers and Reid (1995) review the history of courtroom research and some of the explanations that have been developed to describe or explain judicial decision- making, discretion, and sentencing disparity. Perceived discrepancies in sentences, and perhaps bail decisions as well, may be explained by the routinization of similar cases. "Routinization, according to Mileski (1971), happens when courts attempt to routinize their activities to dispose of cases rapidly and efficiently. Usually, the basis for such judgments are offense seriousness and prior record" (Myers and Reid 1995:225). Therefore, offenders who have committed similar offenses and have similar criminal histories should receive sanctions that are comparable to each other.

The tradition of precedent can also be used as the basis for a judge's decision-making. "Using this perspective, judicial decisionmaking is the product of a judge's legal training. The judge makes a decision on a case through a calculated process in which the case is compared to analogous cases" (Myers and Reid 1995:226). The basis of legal precedents for bail decisions may be found in Supreme Court cases or the Bail Reform Act of 1984. Relying on legal precedent may be an attempt at rationality and for formulating patterned responses to the bail decision.

However, recent research has moved away from reliance on precedent to explain judicial decision-making. Nardulli, Eisenstein, and Flemming (1988) integrate the environment surrounding the courthouse with a systems theory concept of the

"decentralized and complex" courtroom. "Due to their decentralized nature, courts can be understood only as part of a system or community. . .Each courthouse community has its own set of values, norms, structures, and activities that are the derivative of a particular community's adaptations to local pressures or influences" (Myers and Reid 1995:227). The behavior of courtroom participants must therefore be viewed with the local context in mind. Variations between courthouse communities are irrelevant in this study which focuses only on the decisions made in one court.

Victim Factors

A few studies attempt to understand the role of the victim in the judicial process. Lerner and Simmons (1966) propose that people often perceive victims in terms of a "just outcome." The authors contend that people need to see the world as predictable and just, so what happens to a person is attributed to their behavior and character. Related to this belief is the tendency for others to explain the life events of other individuals so that they "get what they deserve, or conversely, deserve what they get" (1966:204). If something bad happens to someone, then his or her actions or character must be at fault. Stokols and Schopler (1973) describe this as "self-protective attribution." In order to view the world as fair and predictable "observers who are potentially vulnerable to the victim's fate tend to assign responsibility for serious misfortune to the victim rather than attribute the unfortunate circumstances to chance" (1973:200). This detaches persons, perhaps jurors or judges, from thinking that the same thing could happen to them.

Landy and Aronson (1974) take a different approach and imply that jurors, as well as others, could be influenced by the perceived "attractiveness" of the victim. "It is likely

that people somehow view a crime as being more serious if the victim of the crime is a good, attractive person" (1974:195). They tested this in a simulation asking 261 sophomores at the University of Texas to sentence offenders who were convicted of a negligent vehicular homicide of either an attractive victim (charitable, successful) or an unattractive victim (ex-convict, armed). Differences in mean sentence length were substantial, but not statistically significant.

The authors then included an attractiveness factor for the defendant as well. Respondents were asked to rate the defendant and the victim on a nine point scale with nine being extremely negative and one being extremely positive. The differences in these ratings were statistically significant for both the defendant and the victim with attractiveness drawing shorter sentences. The differences in the sentences given, however, were not statistically significant. Despite this fact, the authors concluded that their "results suggest that both the character of the defendant and the character of the victim are important variables in the severity of the sentence imposed" (1974:203).

GENERAL STUDIES IN THE BAIL LITERATURE

Nagel's (1983) study of the bail decisions made in a New York City borough supports the theory that extra-legal factors influence bail decisions. Bail decisions in this borough were supposed to be made with *only* the following guidelines in mind: the defendant's character and mental condition, employment, family and community ties, criminal record, prior record of flight from prosecution, weight of the evidence, and the possible sentence. Other variables precluded by the guidelines, but which were, in fact, considered include: the defendant's race, educational level, gender, age, and primary

spoken language. While legally relevant criteria were important in bail decisions, evidence suggested that extra-legal variables had some influence. Although educational level and age were not significantly related statistically to bail decisions, males were significantly less likely to be released on their own recognizance than females. However, there was no difference between genders in the actual amounts of bail set.

Race had no significant effect on the ROR decision though the actual bail amount differed significantly with blacks more likely to receive a higher bail than whites. Nagel (1983:512) concludes that "the extra-legal factors seemingly most determinative of pretrial release decisions are the perceived likelihood that the defendant would be dangerous if freed and the identities of the individual judges." The chance of a defendant having his or her bail set by a "hard" judge rather than a "soft" judge reflects bench bias. "Bench bias refers to the tendency of particular judges to prefer some kinds of outcomes to others regardless of case characteristics" (1983:506).

Goldkamp and Gottfredson (1979) analyzed 8,300 defendants considered for bail in Philadelphia in 1975 and the factors that influenced judicial decisions. Forty-seven percent of the defendants were released without a financial obligation. Only one percent were held without bail and 52 percent were given a categorically "high" or "low" bail amount. The authors included a wide range of factors that have been shown through policy and other research to influence the bail decision such as: family, community ties, prior record, nature of the current offense, employment status, drug or alcohol addiction or use, age, race, gender, general dangerousness, and risk of not appearing. Goldkamp and Gottfredson (1979) concluded that, despite the inclusion of these variables, only a "moderate" amount of the variance in bail decisions was explained. Obviously other

unmeasured legal and extra-legal factors influenced bail decisions.

SPECIFIC FACTORS INCLUDED IN BAIL DECISION MAKING RESEARCH

Gender

Research reported in professional literature is often conflicting in how women are treated by the criminal justice system in comparison to men. Those studies that look at bail decisions, however, seem to be in agreement that the gender of the defendant is not a major factor. Although Nagel (1983) found that women were more likely to receive a ROR decision than men, there was no difference in the actual amount of bail set. Bock and Frazier (1977) also found that gender had no significant relationship to the amount of bail set for 286 misdemeanor and felony cases in Florida.

Steury and Frank (1990) argue that the perceived leniency afforded to women may be due to the fact that they are less likely than men to be facing serious charges or to have a prior record. They analyzed close to 2,000 felony cases from Milwaukee County. Although 69 percent of women versus 58 percent of men were freed on their own recognizance while awaiting trial, when the type and seriousness of the offense were controlled there was no significant difference between men and women in terms of the ROR decision. The authors concluded "that females are treated more leniently by the court and that this leniency may be related to the lesser seriousness of the charges against them rather than to their gender *per se*" (1990:431). The authors urge for more research into this area with larger samples of women who commit more serious or "typically male" crimes.

Race

There is a multitude of literature on the impact of the defendant's race on case decisions and outcomes. Nagel (1983) found that African Americans were more likely to receive a slightly higher bail amount than whites although there was no difference between the two in terms of the ROR decision. Bock and Frazier (1977) found that race was not significantly related to the amount of bail given a defendant. Albonetti, Hauser, Hagan, and Nagel (1989) found that race was not significantly related to the severity of bail conditions for 5,660 male felony defendants in ten federal district courts. The authors did find that higher income and education were more beneficial for whites than for African Americans. It is further noted, however, that when looking at race it is important to control for prior criminal record (Kleck 1981).

The convergence of race of defendant and victim has been widely researched in terms of punishment. Green (1964) looked at 118 cases of robbery and 291 cases of burglary in Philadelphia and the sentences given defendants. Black-on-white crimes were not sentenced more severely than white-on-white crime. "The evidence does not support the hypothesis that the court differentiates the seriousness of crimes according to the race of the offender relative to the race of the victim" (1964:356). These findings may be suspect, however, due to a lack of rigorous statistical analysis. Green reported results in percentages only and no evidence of significance testing can be found in this particular review of his research efforts.

Kleck (1981) reviewed research on race and sentencing for murder with a specific focus on death penalty cases. While some studies have shown more severe penalties for black-on-white murders (Wolfgang and Reidel 1973; Zimring, Eigen, and O'Malley

1976), Kleck contends that proper controls have not been utilized and the perceived disparity may not be due to the racial make-up of the defendant and the victim but to other factors. Many of the murders committed by black defendants involve strangers, the commission of another felony, or a victim who did not provoke the attack, all of which draw stiffer penalties.

Bagby, Parker, Rector, and Kalemba (1994) studied 361 white Canadian university students split into eight groups to watch a re-enactment of a rape trial. The race of the victim and the defendant, as well as other factors, were varied to see if discrimination occurred in mock jury decisions. The subjects were asked, after watching the tape, to fill out a questionnaire concerning the attractiveness of the victim and the defendant and to specify a verdict. The authors found that the race of the victim was not a significant predictor of a guilty verdict. The white defendant was more often found guilty than the black defendant with the black defendant rating higher in "positive appeal." "The results of this investigation indicate that verdict decisions appear to be more directly founded upon the perceived positive appeal of the defendant, above and beyond both defendant and victim race; when the defendant was perceived more positively, irrespective of his race, there was a greater likelihood that he would be found not guilty" (1994:345). The general character or perceived attractiveness of the defendant outweighed any effect of race with this particular experiment.

Age

The age of defendants in terms of bail amounts set by judges has not been examined in detail. Bock and Frazier (1977) did not find the age of the defendant to be

significantly related to the amount of bail set. However, Stryker, Nagel, and Hagan (1983) did find significant differences for 9,080 federal defendants. Those defendants aged 27 to 45 were found to have the most restrictive bail conditions. Those defendants within the 20 to 26 year range had the next restrictive conditions and those 56 years and older had the least restrictive conditions set. The authors provided no explanation for their findings, but it is plausible that those with the most restrictive conditions could have had an extensive prior record or where charged with a more serious offense.

Prior Record and Charge Seriousness

Studies of bail decisions identify legally relevant criteria such as prior record and charge seriousness as the primary criteria used in most state guidelines for setting bail. Goldkamp and Gottfredson (1979) analyzed 8,300 defendants considered for bail and found that 93 percent of the explained variance for the different release decisions was accounted for by charge seriousness, most serious prior arrest, and the average seriousness of all prior convictions. Bock and Frazier (1977) found that probation status, juvenile record, and charge seriousness were all significantly related to the amount of bail set. Charge seriousness was often the sole determining factor in the bail decisions especially since this was often the only relevant information made available at the defendant's first appearance. Albonetti (1989), in an analysis of 4,561 bail cases, also found that the use of a weapon, prior record and crime severity exerted statistically significant effects on receiving a cash bail decision.

Family, Community, and Occupational Ties

The Manhattan Bail Project promoted looking at a defendant's ties to the community in order to determine if he or she would return for trial (Schachter 1991; Beaudin 1970/1971). This famous study showed that defendants with community ties could be trusted to return for trial. While most states have some type of "community tie" criteria in their bail guidelines, the research shows that often these ties do not effect bail decisions. Ebbesen and Konecni (1975) found that prosecutors in San Diego often recommended a higher bail amount when the community ties of the defendant were strong rather than weak. Goldkamp and Gottfredson (1979) found that family and community ties had very little impact on judicial decisions for bail outcomes. Bock and Frazier (1977) did not find community ties, employment status or financial resources to be significantly related to the amount or type of bail given a defendant. However, Stryker et al. (1983) did find that those defendants who were employed received less restrictive bail conditions.

Victim/Offender Relationships

Part of the rationale behind bail with the passage of the Bail Reform Act of 1984 was the safety of the *victim* from the defendant prior to trial. The relationship between defendant and victim prior to the offense has not been widely researched as an extra-legal factor that may influence bail decisions, perhaps because of the high attrition rate for cases involving victims and defendants who know each other. Williams (1976) looked at nearly 4,000 cases of homicide, assault, forcible sex offenses, and robbery where the social relationship between the victim and offender had been noted by the police. Cases were

more likely to be dropped before conviction when the relationship between the victim and offender is close. Prosecutors noted that part of the reason for cases being dropped prior to conviction had to do with difficulties in finding witnesses willing to come forward and cooperate with prosecution. However, other studies have discussed the victim/offender relationship and its effect on the judicial process.

Myers (1979), noting the lack of research involving the possible effect of the victim on judicial decision-making, contends that certain behaviors or characteristics of the victim may increase or decrease the culpability of the defendant. Studies which address assigning responsibility for criminal behavior have shown that "victim attributes and alleged behaviors figure prominently" (1979:530). Myers (1979) feels additionally that there is a "need to broaden the scope of empirical inquiry to include the victim as a determinant of official reactions to criminal defendants" (1979:538).

In her study of sentences given to convicted felons in Indiana, Myers (1979) found that the sentence usually agreed with the recommendation of the probation officer with a prison sentence less likely if the victim had somehow provoked the situation or was involved in misconduct prior to the offense. A prison sentence recommendation was more likely to be made if the victim and the defendant knew each other but only if the victim did not provoke the incident. Myers (1979:537) points out that "contrary to expectation, a prior relationship with the defendant does not operate as a mitigating circumstance to elicit sympathy" and that these results "indicate that victim characteristics, while they do not dominate decision-making, affect the sanctioning of criminal defendants."

Albonetti (1989) explicitly examined the victim/offender relationship and its impact on bail decisions. She analyzed 4,561 superior court cases in Washington D.C. in

1974 to identify determinants of cash bail versus unconditional release. Only 37 percent of defendants had to post cash bail. Although only 20 percent of those who had to post bail had committed a crime against intimates or acquaintances and 46 percent involved crimes against strangers, she found that "crime between strangers compared to those between acquaintances increases the probability of a financial bail outcome" (1989:43). If the victim and offender were strangers, it resulted in a 2 percent increase in the likelihood of the defendant receiving a cash bail decision as compared to ROR.

Albonetti's findings suggest that crimes between people who know each other may not be treated as seriously as those between strangers and the victim may play a role in bail determinations. The current atmosphere in Virginia serves as a timely opportunity to study the influence of the victim on bail determinations as a constitutional amendment was just passed this year giving the General Assembly the power to pass laws in favor of crime victims' rights.

Magistrates

The role of the magistrate has not been extensively investigated in the American literature. However, research of lay magistrates in Britain may be informative. Doherty and East (1985) found that lay magistrates do not receive very thorough training and 96 percent of bail hearings observed by the researchers lasted less than 10 minutes. "The result is that decision-makers, often amateurs with limited training who are working under a time-pressure, have to make subjective decisions on the basis of limited unsubstantiated information" (1985:263). Diamond (1990) interviewed both lay and professional judges and observed them in close to 2,000 bail and sentencing hearings and found that lay

magistrates were more lenient than the professional judges. The author concluded that this leniency may be due to the lesser amount of training and daily court experience of the magistrates in comparison to judges.

Summary

The above review of literature indicates that there is an incomplete understanding of the bail decision-making process even with the prior research that has been done and the theories that have been developed. Previous investigations do serve as a framework to guide further research. Judges, as well as other criminal justice decision-makers, may base their determinations on the prior decisions of other criminal justice professionals, defendant characteristics, and offense characteristics. There may also be other factors that influence judicial decision-making that have not yet been discovered.

The research of Albonetti (1991), Kelley (1973), and Myers and Reid (1995) shows that actors within the criminal justice system often look to prior decisions in the justice process in order to create a standard response and to reach an acceptable outcome for a particular kind of defendant. The other research cited here shows that judges and magistrates utilize many legal and extra-legal factors when determining bail. Personal and demographic characteristics as well as offense characteristics are commonly used to assess the stability, perceived threat, and general reliability of a person accused of a crime. This study looks at a variety of defendant, offense and other characteristics that may influence the choices of judges and magistrates when setting and determining bail.

HYPOTHESES

Based on the previous review of the literature and the theoretical frameworks, a series of hypotheses has been developed for both judges and magistrates in regards to bail decisions. These hypotheses were tested using cases which came before judges in the General District Court of Virginia Beach for a bail hearing between 1993 and 1996.

Since research has shown that bond decisions are often based on the defendant's likelihood of appearing at trial, denying bond or setting higher bond amounts will occur for persons who seem to be less stable in the community (Beaudin 1970/1971; Schachter 1991). Such persons are predicted to fail to appear in court at a higher rate than persons with strong community ties and more stable background characteristics. The following hypotheses are consistent with this line of reasoning:

1. Bail is more likely to be denied for persons who are unemployed or homeless, were using drugs or alcohol at the time of the offense, or have a history of mental illness.

2. For defendants who are granted bond, the amount of bond will be higher for persons who are unemployed or homeless, were using drugs or alcohol at the time of the offense, or have a history of mental illness.

In addition to the community factors mentioned above, bond decisions are associated with factors related to the seriousness of the crime itself. Defendants whose criminal act is more serious will be viewed as more dangerous to the community and should be detained to prevent the commission of further offenses. Thus, the following hypotheses reflect the need to maintain security in the community by preventive detention:

3. Bail is more likely to be denied for persons who commit violent crimes, use a weapon during the crime, or are charged with multiple crimes.

4. For defendants who are granted bond, the amount of bond will be higher for persons who commit violent crimes, use a weapon during the crime, or are charged with multiple crimes.

While the Bail Reform Act of 1984 considered the safety of the victim from the defendant before trial, the influence of victim characteristics on bond decisions is unclear. However, research in other aspects of the criminal justice system suggests that crimes committed by strangers are considered more serious and punished more severely than crimes committed by more intimate persons (Albonetti 1989). Based on this premise, the following hypotheses are suggested:

5. Bond is more likely to be denied for persons who commit crimes against strangers than for those who commit crimes against people they know.

6. For defendants who are granted bond, the amount of bond will be greater for those persons who commit crimes against strangers than for those who commit crimes against people they know.

As the theory of logical attribution states, judges make bond decisions after considering the criminal threat posed by a defendant. If the defendant's act is seen as part of an established pattern of criminality, then bail will be denied or set at a high level to make it difficult for the defendant to make bail and be released into the community. The following hypotheses are based on the argument of logical attribution theory:

7. Bond is more likely to be denied for persons who have prior arrests for

violent, property, sexual, domestic, drugs, disorderly conduct, weapons or other crimes.

8. For defendants who are granted bond, the amount of bond will be higher for persons who have prior arrests for violent, property, sexual, domestic, drugs, disorderly conduct, weapons, or other crimes.

The research literature on race is inconsistent and the findings are mixed but one cannot *a priori* rule out the presence of racial discrimination in our justice system. Furthermore, there is little literature on the effect of age on the bail setting process. Therefore, the following hypotheses are made:

9. Bond is more likely to be denied for persons who are younger.

10. For defendants granted bond, the amount of bond will be higher for younger persons.

11. Bond is more likely to be denied for non-white persons than for white persons.

12. For defendants granted bond, the amount of bond will be higher for non-white persons than for white persons.

Many of the factors being measured are part of the Virginia guidelines for setting bail while others are not. It is important to investigate such factors as race or age in the bail process to determine if discrimination is occurring within this particular sample. If defendants with drug/alcohol problems, a history of homelessness, or mental disorder are being treated more harshly, then it would be wise to investigate other services that may help these particular defendants be released and treated prior to trial. Defendants who know their victims are probably more likely to come into contact with that person on a

regular basis. If these are the types of defendants who are more likely to be released, then their victims could be at greater risk of intimidation or harm prior to the defendant appearing for trial. The results of this study can help identify which factors of the defendant, as well as the offense, influence bail decisions in Virginia Beach and perhaps lead to the development of more efficient and effective alternatives and guidelines.

CHAPTER 3

METHODOLOGY

This chapter describes the specific sample used, how the data were collected, how the dependent and independent variables were defined and coded, and a brief discussion of the statistical measures which were used to analyze the data. The sample for this study was obtained from the bond dockets of Virginia Beach General District Court from December 1993 to January 1996. All violent crimes and the property crimes burglary and threaten to burn which came before a judge for a bond hearing were included in the study. The burglary and threaten to burn crimes were included as "quasi-violent crimes" after discussion with Victim/Witness Program personnel who indicated that victims of these crimes often feel as violated as those of violent crimes.

It should be noted that no defendants who were released on their own recognizance were included in the study. The defendants listed on the bond dockets were those defendants who could not make the bail set by the magistrate or wanted the amount lowered. These factors may imply that the sample is one of defendants who commit more serious crimes, or due to other factors, are less likely to be released without surety. A total of 371 cases were coded and analyzed.

The bond dockets are organized by the defendant's name, the bond given by the magistrate at first appearance, the charges, the name of the detective and defense counsel, and the final bond given by the judge. Once an acceptable case was identified, the relevant case number for the defendant was found and the cases were then located either in the file room of the Commonwealth Attorney's Office or with the assigned prosecuting

attorney. Information relevant for this study was based on the examination of the case files: the number of counts; type of the most serious charge; bond set by the magistrate; bond set by the judge; use of a weapon; race, age, and sex of the defendant; the relationship between the victim and the defendant; homelessness, mental history, drug and/or alcohol use, or unemployment on the part of the defendant at the time of the offense; and the number of prior arrests by offense type within the past 10 years for the defendant.

VARIABLES: DEFINITIONS AND MEASUREMENTS

The dependent variable is the amount of bond, if any, set by magistrates and judges. The independent variables are prior record, number of counts, type of offense, use of a weapon, the mental or homelessness history of the defendant, the employment status of the defendant, the relationship between the victim and the defendant, drug or alcohol use by the defendant at the time of the offense, the race, and age of the defendant.

Dependent Variables

The dependent variable was measured in two ways. First, the amount of the bond set by the magistrate and judge was measured in actual dollar amounts. For defendants who were detained with bond denied, the amount was coded as missing. This was done so that analysis would only be conducted for those defendants who had some possibility of release prior to trial. A second analysis was done with bond coded as "1" if bond was granted and "0" if bond was denied.

Independent Variables

The independent variables for this study can be broken down into different types. Variables related to the offense include: type of offense, number of charges, use of a weapon, and victim/offender relationship. The offense types include: violent, property, sexual, public disorder crimes (e.g., disorderly conduct, drunk in public), weapon, drug, and other. The offense variable was finally collapsed into violent and property because of the low incidence of the other offenses. Only the most serious offense type of all charges for each defendant was coded. The use of a weapon is a dichotomous variable which was coded as yes or no. The victim/offender relationship was broken down into four categories increasing in intimacy: stranger, friend/acquaintance, other family/relative, and spouse/intimate. This information was found in the officer's case reports or the initial police report printout.

Variables related to the defendant include: prior record, mental history, homeless history, employment status, use of drugs or alcohol, race, and age. The prior record of the defendant was broken down into the number of arrests by offense type within the past ten years. Traffic violations such as DUI were omitted. This information was taken either from the presentence report or the TRACER (Total Recall Adult Criminal Element Record) printout included in the case file.

Mental history, unemployment and homelessness on the part of the defendant are all dichotomous variables which were coded either yes or no. This information was found in the officer's case reports, the presentence report and/or the bond worksheet filled out by the magistrate. The use of alcohol and/or drugs by the defendant was also coded yes

or no. This information was found in the presentence report and/or the officer's case report.

A preliminary preview of the data showed that while there were minority defendants other than African Americans, their numbers were not large enough to justify several separate categories. Therefore, the race of the defendant was broken down into two categories: white and non-white. The gender of the defendant was coded either male or female and age was recorded as the actual age in years of the defendant. However, due to significantly low numbers of female defendants, no meaningful comparative analysis could be done. Age was also recoded for crosstabular analysis into four different groups: 18-20 years, 21-30 years, 31-40 years, and over 40. This information was found in the initial police report printout or the presentence report.

ANALYSIS OF THE DATA

The student version of the SPSS PC+ statistical package was used to code the data and test hypotheses. Descriptive statistics such as percentages and means were used to describe demographic and behavioral information of the defendants. Hypotheses were tested by Chi-square, t-tests, and one-way analysis of variance. Multiple regression was used to test the simultaneous impact of the independent variables as well as their relative contribution in accounting for the actual amount of bond. Goldkamp and Gottfredson (1979) found only a "moderate" amount of the variance explained by the inclusion of many legal and extra-legal variables. Since the victim/offender relationship has not been widely studied with other variables, this study attempts to uncover how much variance is explained by the inclusion of this variable within the total model. A bivariate correlation

was used to determine which variables were significant to be included in a multiple regression equation.

The next chapter will discuss the results of the present study and how these results relate to the stated hypotheses.

CHAPTER 4

RESULTS

This chapter presents the findings of the current study of bail decisions in Virginia Beach General District Court. Findings will be discussed in order of the hypotheses and references will be made to corresponding tables.

Hypothesis 1 predicted that unstable defendants compared to stable defendants are more likely to have bail denied. Data in Table 1 show no statistically significant support for Hypothesis 1. Neither magistrates nor judges differ significantly in the percentage of unstable persons compared to stable persons denied bond. Magistrates are more likely to deny bond to defendants who are homeless or have a history of mental illness but are less likely to deny bond for persons who are unemployed or use drugs or alcohol. These are inconsistent observations so far as confirming Hypothesis 1. None of the differences is statistically significant as measured by Chi-square. The bond decisions for unstable defendants by judges also vary but in a pattern different from that of the magistrates. Judges are more likely to deny bail for unemployed defendants and those with a history of mental illness. Homeless and drug or alcohol using defendants are less likely to have bail denied. Again, the differences for judges are not statistically significant.

Significant differences are found in the amount of bond set by magistrates for defendants with a history of homelessness, drug or alcohol use or mental disorder but not in the direction expected. Defendants who are homeless, using drugs/alcohol and have a history of mental disorder are given a *lower* bond by magistrates. Judges also set a significantly lower bond for defendants with a mental history. The only support for

Table 1. Percentage of Defendants Denied Bond by Magistrates and Judges by Stability Characteristics.

MAGISTRATES

Characteristic	Percent	n	Chi-square	df
Unemployed	58.5	72		
Employed	60.1	149	.02991	1
Homeless	60.9	14		
Not Homeless	59.4	206	.00000	1
Drug/Alcohol Use	57.9	55		
No Drug/Alcohol Use	61.2	41	.06685	1
Mental History	67.6	23		
No Mental History	60.0	48	.31301	1

JUDGES

Characteristic	Percent	n	Chi-square	df
Unemployed	32.5	40		
Employed	31.9	79	.00012	1
Homeless	26.1	6		
Not Homeless	32.6	113	.17108	1
Drug/Alcohol Use	32.6	31		
No Drug/Alcohol Use	38.8	26	.41396	1
Mental History	35.3	12		
No Mental History	33.8	27	.00000	1

*p<.05
**p<.01
***p<.001

Hypothesis 2 is in the higher bail amount for unemployed defendants compared to those who are employed. The difference is not statistically significant measured by a t-test, however. Considering that type of offense was not controlled for, caution must be noted when looking at these results. It is possible that defendants with unstable characteristics are committing less serious crimes than those with more stable life circumstances. Overall, Hypothesis 2 is not supported with the relevant data found in Table 2.

Hypothesis 3 predicts that bail is more likely to be denied for persons who commit serious crimes. The data in Table 3 generally support the hypothesis. Magistrates are more likely to detain a defendant who commits a violent crime and who uses a weapon. Use of a weapon is statistically significant in that magistrates detain 68 percent of defendants who use a weapon compared to only 55 percent of defendants who do not use a weapon. Even though the differences of bail denial for defendants who commit more serious crimes or are charged with multiple counts are not significant, they are in the predicted direction.

The bail decisions of judges confirm Hypothesis 3. Judges are significantly more likely to detain a defendant who commits a violent crime, uses a weapon, and is charged with more criminal counts. Only 25 percent of defendants charged with one count were detained compared to 59 percent of defendants charged with five or more counts (see Table 3).

Table 4 shows that Hypothesis 4 is supported by the data. Both magistrates and judges set higher bond amounts for defendants who commit violent crimes, use a weapon, or are charged with multiple crimes. Magistrates set an average bond of $42,335.37 for defendants charged with a violent crime versus $12,914.06 for a property crime. They

Table 2. Mean Bond Set by Magistrates and Judges by Stability Characteristics of Defendant (in dollars).

MAGISTRATES

Characteristic	Mean	Std	n	t	df
Unemployed	$25,660.00	45308.63	50		
Employed	$31,406.25	53764.71	96	.68	115
Homeless	$ 9,833.33**	15339.90	9		
Not Homeless	$30,726.28	52209.88	137	3.08	24
Drug/Alcohol Use	$29,512.50*	49269.21	40		
No Drug/Alcohol Use	$64,954.55	72926.07	22	2.28	60
Mental History	$20,750.00*	31661.62	10		
No Mental History	$58,913.79	68886.56	29	1.68	37

JUDGES

Characteristic	Mean	Std	n	t	df
Unemployed	$21,692.77	36362.83	83		
Employed	$18,902.37	37864.51	169	-.56	169
Homeless	$10,264.71	11569.25	17		
Not Homeless	$20,557.69	38524.61	234	2.73	50
Drug/Alcohol Use	$22,132.81	38832.69	64		
No Drug/Alcohol Use	$39,902.44	58449.57	41	1.87	103
Mental History	$17,227.27**	22614.12	22		
No Mental History	$38,330.19	55154.41	53	1.73	73

*p<.05
**p<.01
***p<.001

Table 3. Percentage of Defendants Denied Bond by Magistrates and Judges by Seriousness of Offense.

MAGISTRATES

Offense Characteristics	Percent	n	Chi-square	df
Violent	62.9	146		
Property	54.0	75	2.54592	1
Weapon Used	67.9*	106		
No Weapon	54.8	109	5.81558	1
1 Count	58.0	51		
2 Counts	53.4	71		
3-4 Counts	63.5	61		
5 or More Counts	70.4	38	5.45304	3

JUDGES

Offense Characteristic	Percent	n	Chi-square	df
Violent	37.9***	88		
Property	22.3	31	9.04092	1
Weapon Used	39.7**	53		
No Weapon Used	26.6	62	6.27768	1
1 Count	25.0	22		
2 Counts	21.8	29		
3-4 Counts	37.5	36		
5 or More Counts	59.3***	32	28.07375	3

*p<.05
**p<.01
***p<.001

Table 4. Mean Bond (in dollars) Set by Magistrates and Judges by Seriousness of Offense.

MAGISTRATES

Offense Characteristics	Mean	Std	n	t	df
Violent	$42,335.37***	61776.23	82		
Property	$12,914.06	23921.92	64	3.95	110
Weapon Used	$52,755.32**	69523.37	47		
No Weapon	$18,123.60	35117.04	89	-3.21	59
1 Count	$15,121.62	19311.20	37		
More Than 1 Count	$34,298.17**	57146.99	109	-3.03	144

JUDGES

Offense Characteristics	Mean	Std	n	t	df
Violent	$26,149.31***	45423.11	144		
Property	$11,384.26	19628.16	108	3.49	206
Weapon Used	$31,957.45***	48146.43	146		
No Weapon Used	$12,537.67	26734.46	94	-3.57	130
1 Count	$10,333.33	15429.58	66		
More Than 1 Count	$23,188.17***	41990.92	186	-3.55	250

*p<.05
**p<.01
***p<.001

also set bail amounts significantly higher for those defendants who use a weapon than for those who do not ($52,755.32 compared to $18,123.60) as do judges ($31,957.45 compared to$12,537.67). Both magistrates and judges set significantly higher bail amounts for defendants charged with multiple crimes rather than one singular offense ($34,298.17 compared to $15,121.62 and $23,188.17 compared to $10,333.33 respectively). These findings support the rationale that judges and magistrates utilize community safety measures in making bond decisions.

Hypothesis 5 is not fully supported by the results reported in Table 5. There is no significant difference in percentages of defendants detained by magistrates for victim/offender relationship. The direction, moreover, is opposite that predicted since the more intimate relationships have higher percentages of defendants detained by magistrates. Only 60 percent of defendants who committed a crime against a stranger were detained compared to 73 percent of defendants who committed a crime against a spouse or intimate.

There is a significant difference measured by Chi-square for judges which partially supports Hypothesis 5. Thirty-six percent of defendants who commit crimes against a stranger are detained compared to only 22 percent of defendants who commit crimes against a friend/acquaintance or family member. However, the greatest percentage of defendants detained by judges commit crimes against a spouse or intimate (46 percent) which is contrary to Hypothesis 5.

Table 6 shows that magistrates set higher bonds for defendants who commit crimes against other family members (in excess of $100,000) which does not support Hypothesis 6. However, crimes against strangers receive a higher average bond amount

Table 5. Percentage of Defendants Denied Bond by Magistrates and Judges by Victim/Offender Relationship.

MAGISTRATES

Relationship	Percent	n	Chi-square	df
Stranger	59.9	106		
Friend/Acquaintance	55.7	49		
Other Family/Relative	77.8	7		
Spouse/Intimate	72.7	16	3.35624	5

JUDGES

Relationship	Percent	n	Chi-square	df
Stranger	35.6	64		
Friend/Acquaintance	21.6	19		
Other Family/Relative	22.2	2		
Spouse/Intimate	45.5*	10	7.67511	5

*p<.05
**p<.01
***p<.001

Table 6. Mean Bond (in dollars) Set by Magistrates and Judges by Victim/Offender Relationship (One-way ANOVA).

MAGISTRATES

Relationship	Mean	Std	n
Stranger	$29,929.58*	55787.75	71
Friend/Acquaintance	$26,205.13	30466.49	39
Other Family/Relative	$130,000.00	169705.63	2
Spouse/Intimate	$13,916.67	18073.23	6

Source	df	SS	MS	F Ratio
Between Groups	3	22093269974	7364423325	2.9607
Within Groups	114	283564000000	2487405396	
Total	117	305657000000		

JUDGES

Relationship	Mean	Std	n
Stranger	$21,064.66	44450.73	116
Friend/Acquaintance	$18,673.91	24369.07	69
Other Family/Relative	$11,142.86	17372.67	7
Spouse/Intimate	$10,291.67	8335.19	12

Source	df	SS	MS	F Ratio
Between Groups	3	18277778453	609259484	.4510
Within Groups	200	270182000000	1350908822	
Total	203	272010000000		

than crimes against spouses or intimates. These differences for magistrates are significant at the .05 level measured by one-way ANOVA. Judges give higher bond amounts for defendants who commit crimes against strangers ($18,673.91) than those who commit crimes against spouses or intimates ($10,291.67). Although the differences are not statistically significant (p=.055), they approach significance and are in the direction predicted with bond amounts increasing as the level of intimacy between victim and offender increases.

There is little support for Hypothesis 7 as seen in Table 7. The expectation is that defendants with prior arrests will more likely have bail denied. Information was gathered for eight different types of offenses. Looking at magistrates' decisions and 5 of the 8 offenses, violence, domestic violence, drug, disorderly conduct, and a weapon offense, the data are in the direction predicted with those with prior arrests more likely to be denied bond. None of the differences is statistically significant, however. Judges' decisions also are inconsistent on granting bail to persons with prior arrests. On 6 of the 8 offenses, a prior arrest is more likely to lead to bail denial as predicted. Only defendants with prior drug or weapon arrests showed statistically significant differences. Contrary to expectations, persons with prior sexual and public disorder arrests were less likely to have bail denied.

When defendants were granted bail the influence of prior arrests on the amount of bail is not clear. The pattern for magistrates and judges is the same. As predicted, higher bond occurs for defendants with prior arrests for violent, property, drug, disorderly conduct, and weapon offenses. However, none of the differences is significant. For both judges and magistrates the difference in bail amount is significant for domestic and "other"

Table 7. Percentage of Defendants Denied Bond by Magistrates and Judges by Prior Arrests.

MAGISTRATES

Prior Arrest History	Percent	n	Chi-Square	df
Prior Violent	57.7	90		
No Prior Violent	56.1	87	.02685	1
Prior Property	55.2	112		
No Prior Property	59.6	65	.40750	1
Prior Sexual	47.4	9		
No Prior Sexual	57.1	165	.34739	1
Prior Domestic	66.7	18		
No Prior Domestic	55.5	156	.83376	1
Prior Drug	61.5	59		
No Prior Drug	54.0	114	1.19417	1
Prior Crime v. Order	61.1	55		
No Prior Crime v. Order	55.0	121	.73890	1
Prior Weapon	64.9	37		
No Prior Weapon	55.4	138	1.70639	1
Prior Others	55.4	107		
No Prior Others	59.0	69	.24067	1

JUDGES

Prior Arrest History	Percent	n	Chi-square	df
Prior Violent	32.7	51		
No Prior Violent	30.3	47	.10740	1
Prior Property	33.0	67		
No Prior Property	30.3	33	.13349	1
Prior Sexual	26.3	5		
No Prior Sexual	32.5	94	.09480	1

Table 7. Continued

	JUDGES			
Prior Arrest History	Percent	n	Chi-square	df
Prior Domestic	44.4	12		
No Prior Domestic	31.3	88	1.38370	1
Prior Drug	42.7*	41		
No Prior Drug	28.0	59	5.87842	1
Prior Crime v. Order	31.1	28		
No Prior Crime v. Order	32.3	71	.00422	1
Prior Weapon	44.8*	26		
No Prior Weapon	29.5	74	5.06847	1
Prior Others	32.6	63		
No Prior Others	30.8	36	.04720	1

*p<.05
**p<.01
***p<.001

prior arrests, but the values are in the direction opposite that expected. Hypothesis 8 is therefore not supported by the data shown in Table 8.

According to Table 9, older defendants are most likely to be detained by magistrates which is opposite the relationship stated in Hypothesis 9. Almost 74 percent of defendants over the age of 40 were detained compared to only 50 percent of defendants 18 to 20 years of age. Judges, on the other hand, denied bond more in accordance with Hypothesis 9. While only 22 percent of those defendants aged 18 to 20 were detained, the highest percentage of defendants detained were 21 to 30 years of age, and the lowest percent was over 40 which is similar to the findings of Stryker et al. (1983).

The data in Table 10 do show support for Hypothesis 10, although the differences are not significant as measured by a one-way ANOVA. Both magistrates and judges set higher bond amounts for defendants who are younger. Those defendants ages 18 to 20 have an average bond of $32,803.57 set by magistrates compared to only $14,700.00 for defendants 41 and older. Similarly, judges set an average bond of $24,477.78 for defendants ages 18 to 20 compared to only $14,000.00 for those 41 and older.

Hypothesis 11 was not supported. According to Table 11, magistrates detain a greater percentage of white defendants than non-white defendants, although the differences are not statistically significant. Judges detain a similar percentage of white and non-white defendants. Hypothesis 12 is supported with both magistrates and judges setting higher bail amounts for non-whites than whites as seen in Table 12. There is about a $16,000 difference between the bail set for whites and non-whites by magistrates and a $10,000 difference between the two for judges. These findings are similar to those

Table 8. Mean Bond (in dollars) Set by Magistrates and Judges by Prior Arrests.

MAGISTRATES

Prior Arrest History	Mean	Std	n	t	df
Prior Violent	$30,968.75	50570.39	64		
No Prior Violent	$22,007.58	39183.44	66	-1.13	119
Prior Property	$27,449.44	45886.41	89		
No Prior Property	$23,872.09	43130.21	43	-.43	130
Prior Sexual	$17,900.00	18188.52	10		
No Prior Sexual	$26,987.60	46551.74	121	1.27	21
Prior Domestic	$13,833.33*	13088.64	9		
No Prior Domestic	$27,385.25	46388.53	122	2.24	28
Prior Drug	$28,597.22	49132.01	36		
No Prior Drug	$25,642.11	43585.67	95	-.33	129
Prior Crime v. Order	$26,985.29	35222.13	34		
No Prior Crime v. Order	$26,281.25	48377.34	96	-.08	128
Prior Weapon	$35,750.00	60288.89	20		
No Prior Weapon	$24,779.28	41799.23	111	-1.00	129
Prior Other	$18,888.24*	25522.68	85		
No Prior Other	$39,978.26	65961.94	46	2.09	52

JUDGES

Prior Arrest History	Mean	Std	n	t	df
Prior Violent	$22,904.76	40457.37	105		
No Prior Violent	$16,296.30	31085.50	108	-1.33	195
Prior Property	$20,841.91	37717.75	136		
No Prior Property	$17,440.79	33289.74	76	-.66	210
Prior Sexual	$13,785.71	16419.63	14		
No Prior Sexual	$20,138.46	37386.62	195	1.24	24

Table 8. Continued

JUDGES

Prior Arrest History	Mean	Std	n	t	df
Prior Domestic	$ 6,766.67***	5969.77	15		
No Prior Domestic	$20,795.34	37620.76	193	4.50	138
Prior Drug	$20,545.45	38809.99	55		
No Prior Drug	$19,605.26	35787.16	152	-.16	205
Prior Crime v. Order	$19,862.90	27440.72	62		
No Prior Crime v. Order	$19,453.02	39394.59	149	-.09	162
Prior Weapon	$29,781.25	48973.98	32		
No Prior Weapon	$18,033.90	33455.52	177	-1.69	207
Prior Other	$15,142.31*	20998.55	130		
No Prior Other	$26,993.83	51433.06	81	1.97	97

*p<.05
**p<.01
***p<.001

Table 9. Percentage of Defendants Denied Bond by Magistrates and Judges by Age.

MAGISTRATES

Age	Percent	n	Chi-square	df
18-20	50.0*	56		
21-30	62.6	97		
31-40	66.7	54		
Over 40	73.7	14	8.08681	3

JUDGES

Age	Percent	n	Chi-square	df
18-20	21.7*	25		
21-30	38.7	60		
31-40	36.6	30		
Over 40	21.1	4	10.59568	3

*p<.05
**p<.01
***p<.001

Table 10. Mean Bond (in dollars) Set by Magistrates and Judges by Defendant's Age (One-way ANOVA).

MAGISTRATES

Age	Mean	Std	n
18-20	$32,803.57	57858.74	56
21-30	$31,500.00	54000.24	58
31-40	$20,759.26	28804.17	27
Over 40	$14,700.00	9769.85	5

Source	df	SS	MS	F Ratio
Between Groups	3	4000627035	1333540245	.5086
Within Groups	142	372287000000	2621738200	
Total	145	376287000000		

JUDGES

Age	Mean	Std	n
18-20	$24,477.78	47273.76	90
21-30	$20,468.42	37433.26	95
31-40	$12,259.62	13972.13	52
Over 40	$14,000.00	16210.67	15

Source	df	SS	MS	F Ratio
Between Groups	3	5472858275	1824286092	1.3142
Within Groups	248	344251000000	1388107282	
Total	251	349723000000		

Table 11. Percentage of Defendants Denied Bond by Magistrates and Judges by Defendant's Race.

MAGISTRATES

Race	Percent	n	Chi-square	df
White	62.5	95		
Non-white	58.6	126	.56402	1

JUDGES

Race	Percent	n	Chi-square	df
White	30.9	47		
Non-white	32.9	72	.15751	1

*p<.05
**p<.01
***p<.001

Table 12. Mean Bond (in dollars) Set by Magistrates and Judges by Defendant's Race.

MAGISTRATES

Race	Mean	Std	n	t	df
White	$19,552.63	40491.15	57		
Non-white	$35,769.66*	55935.79	89	-2.03	142

JUDGES

Race	Mean	Std	n	t	df
White	$13,685.71	29603.25	105		
Non-white	$24,204.08*	41529.52	147	-2.35	250

*p<.05
**p<.01
***p<.001

reported by Nagel (1983).

A bivariate correlation was done to determine which variables where significant to be put in a multiple regression equation and the results are found in Table 13. For magistrates, only the use of a weapon and the number of counts are significant. The amount of variance explained is only 18 percent. For judges, the number of counts, the use of a weapon and prior property arrests are significant. Again, only 17 percent of the variance is explained.

In summary, not all of the research hypotheses are supported. In fact, much of what is found contradicts the stated hypotheses as well as previous research findings. The next chapter will discuss the research findings in greater detail and the policy implications that can be made from these findings as well as point out some of the limitations of the study.

Table 13. Multiple Regression Results for Amount of Bond (in dollars) Set by Magistrates and Judges.

MAGISTRATES

Variable	B	SE B	T	Significance of T
Use of a Weapon	30614.17	7939.36	3.856	.0002
Number of Counts	8567.01	2742.83	3.123	.0022

Multiple R= .43894
R Square= .19267
Adjusted R Square= .17932

JUDGES

Variable	B	SE B	T	Significance of T
Number of Counts	4496.56	1488.68	3.021	.0029
Use of a Weapon	19463.82	4883.66	3.985	.0001
Prior Property Arrests	2120.50	724.58	2.927	.0038

Multiple R= .42604
R Square= .18151
Adjusted R Square= .16911

CHAPTER 5

DISCUSSION AND CONCLUSION

This chapter discusses the results presented in the previous chapter to relate the findings to the research literature and the body of knowledge on bond decisions. This chapter also addresses the limitations of this study and recommendations for future research.

DISCUSSION OF RESULTS

The focus of this study is to investigate which factors influence bail decisions made by magistrates and judges in Virginia Beach. Part of the rationale behind bail is to insure the appearance of the defendant at trial. Studies such as the Manhattan Bail Project showed that defendants with strong community ties and more stable life circumstances were very likely to return for trial and could therefore be released (Schachter 1991; Beaudin 1970/1971). A profile of such a defendant would be one who is employed, has legal residence, has family and other community ties, and does not use drugs or alcohol. The results from this study do not indicate that magistrates and judges take such a profile into consideration when making certain bail decisions, however. Both magistrates and judges are more likely to detain defendants who are not using drugs or alcohol at the time of the offense than those who are using drugs or alcohol. Magistrates are also more likely to detain defendants who are employed and judges are more likely to detain defendants who are not homeless (see Table 1). Perhaps these characteristics are considered initially when the decision to release a defendant on ROR is made. A defendant who has

employment, residence, and no alcohol or substance abuse problems is probably more likely to be released on his or her own recognizance. Thus, these variables may have more weight at the ROR decision which was not investigated.

Magistrates set higher bond amounts for defendants who have more stable characteristics. Judges acted similarly with the exception of unemployed defendants (see Table 2). Further analysis, however, shows that the defendants with stable characteristics are more likely to commit a violent crime while those with less stable living conditions are more likely to commit a property crime. These findings are not totally inconsistent with the research literature either. Ebbesen and Konecni (1975) found that prosecutors were more likely to set higher bail amounts for defendants with strong community ties. Goldkamp and Gottfredson (1979) and Bock and Frazier (1977) also found that community ties did not make many significant differences on bail decisions.

It is expected that defendants who commit more serious types of offenses will be given higher bail amounts or will be more likely to be denied bail than those who commit less serious offenses. Both magistrates and judges are more likely to deny bond to defendants who commit a violent crime, use a weapon, and have five or more charges against them. These offense characteristics are statistically significant for the decisions made by judges while only the use of a weapon is significant for magistrates (see Table 3). Magistrates and judges also set higher bond amounts for defendants with more serious offense factors (see Table 4). These findings are consistent with Bock and Frazier (1977) and Albonetti (1989). They are also consistent with the bail setting guidelines for the Commonwealth of Virginia which indicate that the nature of the charge is a relevant factor to be considered when setting bail (Goldkamp 1985). While Virginia Beach decision-

makers responsible for bail considerations may not be using community factors in their determinations, they do seem to be aware of offense factors.

The role of victim/offender relationships in bail determinations is also a focus of this study which finds an inconsistent pattern. Prior research suggests that defendants who commit crimes against strangers receive harsher bail terms than those who commit crimes against persons they know (Albonetti 1989). This is not the case for defendants denied bond by magistrates. Defendants who commit crimes against family members or intimates are more likely to be detained by magistrates than those who commit crimes against strangers. Judges, however, present a slightly different picture. Defendants who commit crimes against spouses or intimates are most likely to be detained, followed by those who commit crimes against strangers. Defendants who commit crimes against friends or other family are much less likely to be detained (see Table 5).

The findings of Albonetti (1989) are consistent with the present findings when looking at the actual dollar amount of bail set by magistrates and judges. Judges set the highest bail amounts for defendants who commit crimes against strangers as did magistrates with the exception of "other family." The amount of $130,000 for this category should be taken with caution since there were only two cases, one with a bond of $250,000. This amount, which was later greatly reduced to $50,000 by the judge, is extreme and inflated the value of the mean. The lowest amounts are given to defendants who commit crimes against spouses or intimates (see Table 6). The pattern of bond amounts for spouses or intimates is distressing since these defendants, if they are released, will most likely come into contact again with their victims given the closeness of their relationship. The safety of these victims and potential witnesses does not seem to be a

major factor considered in Virginia Beach. Perhaps unmeasured actions on the part of the victim can explain these differences. It may be that victims who know their offender act in ways that judges and magistrates view as mitigating the culpability of the defendant and thus these defendants are given more lenient bail terms.

Defendants with prior arrests are expected to be denied bail more than those without a prior arrest record. For magistrates, defendants who have been arrested previously for violence, domestic violence, drugs, disorderly conduct, or weapons are more likely to be detained although the difference is not significant (see Table 7). Defendants with prior arrests for property or sexual offenses are less likely to be detained than persons without such arrests. Decisions of judges are similar with defendants with prior drug or weapons arrests being significantly more likely to be detained than those without prior drug or weapons arrests. Contrary to expectations, violent crimes do not significantly impact the "in/out" decisions of judges or magistrates.

When defendants are granted bail, magistrates and judges set higher bail amounts for defendants previously arrested for violent, property, drug, disorderly conduct and weapon offenses although none of these differences is significant (see Table 8). Both judges and magistrates set significantly lower bail amounts for defendants with prior domestic and "other" offense arrests. These findings are confusing and unclear.

Prior research has shown that defendants who are younger receive harsher bond terms. The higher bond may be related to a fear that these defendants have fewer community ties and are less likely to return for trial. Magistrates are more likely to deny bond, however, to defendants who are older perhaps because these defendants have a more extensive prior record or commit more serious crimes (see Table 9). Judges detain

defendants more in accordance with Hypothesis 9 which states that younger defendants will be more likely to have bond denied. These results also agree with the findings of Stryker et al. (1983). Defendants ages 21 to 30 are most likely to be detained and those over 40 are least likely to be detained.

Defendants who are 18 to 20 years old who are granted bond are set the highest bond amounts by both judges and magistrates (see Table 10) while defendants over 40 were given the lowest bond amounts, $14,700 and $14,000 respectively. Further analysis revealed that there were no significant differences between the age groups and the likelihood of committing a violent offense.

Race does not seem to have an effect on defendants being granted bond as no significant differences are apparent (see Table 11). Magistrates detain 63 percent of white defendants and 59 percent of non-white defendants. Judges also detain white and non-white defendants in similar proportion, 31 percent and 33 percent respectively. The picture changes, however, for defendants actually granted bond (see Table 12). Both magistrates and judges set significantly higher bond amounts for non-white defendants. However, when offense characteristics such as use of a weapon, number of charges, and offense type are controlled for, race is no longer significant. These findings are similar to those of Nagel (1983) who found no differences between black and white defendants in terms of the ROR decision but did find slightly higher bond amounts for blacks.

According to Table 13, very little of the variance is explained by the inclusion of the legal and extra-legal variables used in this study. Goldkamp and Gottfredson (1979) found only moderate amounts of variance explained by their model as well. Only use of a weapon and number of counts are significant for both magistrates and judges but still

account for less than 20 percent of the variance in bail decisions.

Informal discussions with a former magistrate were helpful in understanding why magistrates may make the decisions that they do on a daily basis. Oftentimes the magistrate does not want to bear fully the responsibility of deciding bail amounts and will detain the defendant with the attitude that the judge can handle it in the morning. This particular individual was also surprised to learn that there were guidelines for bond decisions in the Commonwealth of Virginia and says that they are not used by magistrates in Virginia Beach. This was also mentioned by Ares et al. (1963) as a problem in that magistrates often do not know the criteria to make a proper bail decision.

Furthermore, Virginia Beach magistrates have access to defendants' arrest record only for prior arrests in the city of Virginia Beach, so they do not know if they are wanted in other nearby cities, or what their arrest record looks like for surrounding areas. A similar problem has been noted by judges in other areas (Goldkamp, Gottfredson, Jones, and Weiland 1995). Some individual magistrates seem to have a set system to determine bail for certain offenses. For example, for crimes against a person, a particular magistrate may set bail at $5,000 for each victim. However, there seems to be no uniformity or consistency across magistrates as a whole.

LIMITATIONS

This study utilizes a sample drawn from bond dockets in Virginia Beach General District Court which means that only defendants who were detained by the magistrate, and those who were given a bond amount that they do not agree with or could not afford were listed on the bond dockets for a bond hearing before a judge. Also, only those

defendants charged with violent crimes, burglary, and threaten to burn offenses were selected from the dockets. Taking these factors into consideration, the current sample is one of more serious offenders. No defendants who were ROR'd were included, so this aspect of the bond process cannot be commented on. Also, perhaps due to the more violent sample of offenders, there were very low numbers of female defendants so no meaningful comparisons between men and women could be made.

Another limitation is the low numbers within many categories of the independent variables -- particularly the victim/offender relationship. A larger distribution within these categories would have been desirable. It has been suggested that the information for magistrates and judges be combined to increase the numbers in certain categories. However, since magistrates may have significantly less education than judges and since they have access to much less information than judges, it makes sense to keep their analyses separate. Prior research has also shown that the recommendation of other criminal justice personnel may explain much of the variance in bail decisions, however, this information was not available for collection and analysis (Goldkamp et al. 1995).

POLICY IMPLICATIONS

It is evident that the variables used in this study do not fully explain the bail decisions of magistrates and judges. In fact, much of what they do is totally unexplained by the variables examined in this study. For the sample presented here, it seems that type of offense, use of a weapon, and the number of criminal counts have significant influences on the criminal justice personnel making bail decisions. These are legally relevant criteria and could be included in the "nature of the charge factor" which is part of the guidelines

established for the Commonwealth of Virginia.

Victim/offender relationships do make a difference in bail decisions in Virginia Beach. While more of those defendants who commit crimes against people they know are detained by magistrates and judges, lower bond amounts are given for those defendants who are given a bond and who commit crimes against spouses or intimates.

Perhaps there needs to be some training implemented for magistrates and judges that discusses the phenomenon of family violence and how it impacts the family and community as a whole. Since it is these defendants who will most likely come into contact with their victim before trial, greater protections, which could include higher bond amounts or pretrial detention, need to be guarenteed. The findings of Williams (1976) show that many of the cases dropped before trial are those where the relationship between the victim and offender is closer. Perhaps these defendants have threatened or otherwise intimidated their victims into dropping charges. With such a defendant behind bars, this risk of intimidation may be greatly reduced.

The inability to account for much of the bail decision-making process suggests that the decision may not be a truly rational process as claimed by Albonetti (1991), but more of a work routine based on precedent or routinization. A judge or magistrate may have a standard bail amount that he/she gives to particular types of offenders for a particular type of crime. However, these standards may not be uniform across all magistrates or judges. Observations of bond hearings showed that judges do ask defendants about such factors as employment, family, community ties, and prior record. However, since the average time for a bond hearing was only seven minutes it is questionable whether the judge had ample time to make a truly rational decision based on all of the information that is given to

him/her during the hearing by both the defense attorney and Commonwealth's Attorney.

CONCLUSION

This study has shown that legal factors such as use of weapon, the number of counts and type of offense figure significantly in bail decisions. However, future research in bond decisions should not overlook the possible influence of such extra-legal factors such as victim/offender relationship. While the findings are not totally in agreement with the stated hypotheses, there is evidence that those defendants closest to their victims are given lower bail amounts. This can have serious repercussions if the defendant actually makes bond and is released back into the community.

Since this research has found - as have prior efforts - that much of the variance is unexplained in bail decisions by the inclusion of several legal and extra-legal variables, perhaps it would be beneficial to incorporate both qualitative and quantitative methods in an attempt to explain judicial decision-making. Court observations and personal interviews with judges and magistrates may be helpful. Also, the role of other criminal justice personnel such as magistrates cannot be overlooked. The present study has shown that magistrates do not always make the same types of decisions that judges do and this is significant because the defendant is first brought before the magistrate upon arrest. While other research indicates that magistrates may be more lenient than professional judges (Diamond 1990), the present study shows that magistrates detain defendants more often than do judges. However, magistrates may be releasing more defendants on their own recognizance which would suggest greater leniency on their part.

Finally, it would be beneficial for both judges and magistrates to receive some

training on both family violence and the bail guidelines established for the Commonwealth of Virginia. It is obvious that the safety of many defendants' spouses or intimates is in jeopardy given the tendency for lower bail amounts to be given. Episodes of repeat violence or other offenses could be reduced if more of these types of defendants were detained prior to trial. Furthermore, judges and magistrates should be aware of the bail guidelines for Virginia so that their decisions may become more equitable. Discussions with a former magistrate indicate that the magistrates of Virginia Beach are not aware of these guidelines and may have no set standards or criteria for making the initial bail decision. A better educated criminal justice system is perhaps a more equitable and less discriminatory system.

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