CRIME FILE

Out on Bail

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Your discussions may benefit from access to background information on the evolution of bail in the United States, on recent reforms in pretrial release procedures, and on current problems and controversies concerning bail and pretrial release.
The Evolution of Bail

Our system of justice emphasizes deliberation and process to prevent the loss of freedom, reflecting a careful consideration of the facts of an individual case, and therefore to assure that justice is not executed hastily. One aspect of this orientation is the establishment of a reasonable interval between the arrest and the appearance in court. This interval should be neither too long nor too short to ensure that the development of the relevant facts and careful deliberation be uncompromised.

However, at this critical juncture for process, the defendant's existence itself (which creates a pool of people whose presence is an unavoidable legal status) and the defendant's probable, guilty behavior, are taken into consideration. The dominant approach: a ban on bail. The Evolution of Bail has been the subject of considerable attention, especially in the mid-60's, when the goal of reforming the bail process was widely accepted. The principal reformers of the 1960's, in their concern for liberty, were motivated by the belief that there is a close correlation between the presence at trial and the likelihood of a conviction. The penal system has been studied by many, and it is generally agreed that the presence of a defendant at trial is an important factor in determining guilt.

All of these approaches are new in one way or another. The dominant approach until the mid-60's was the release on bail. In the mid-60's, this approach was attacked because it seemed too lenient against the poor and minority groups. Many people accused of crime were poor and were, for whatever reason, allowed to post bail. This was seen as a violation of the eighth amendment and was ruled to be unconstitutional. This seemed to violate the eighth amendment's prohibition against bail. In addition, the judges, who saw bail as a tool to guide them in their decisions, said it had never been used to be guided by any explicit policies. Distortion was the rule.

Reacting to the economic inequity inherent in each bail, a new version of the same was on the way. Bail reform, of course, was the Manhattan Bail Project of 1966 to 1964, which included such principles as bail and release without making financial arrangements. This release on one's own recognizance ("ROR") amounted to a simple promise from the defendant to appear for trial. The Manhattan Bail Project was a success in the sense that the simple ROR defendant did appear for trial. The use of ROR releases for many defendants seems to have been a major event.

Today's pretrial release agencies were set up at that time to interview defendants after arrest and to obtain information: the severity of the crime, the character of the defendant, the likelihood that he will appear at trial, and the quality of the deconstraining process about bail.

Who is detaine? The majority of defendants today, over 85 percent are released in some manner or other, some 70 percent of these released are freed nonviolently.

A large number of jobs in the courts are extremely crowded, with many under court orders because their convicted conditions violate constitutional standards governing the custody of prisoners. A large number of those detained in jail are people who charged with minor offenses, many apparently lack the resources to raise even the small sum required to bail. Imprisonment for minor offenses is a serious matter. The conduct of those who are released. Among those, who are released, seven of every eight return for trial or other disposition. The reason, one in every six, that a released defendant is arrested for an offense committed during the period of pretrial release. These new offenses, as a group, are slightly more severe than the minor charges in these defendants' cases. Some 80 percent of these defendants are nonviolent, while on pretrial release, they are nonviolent. In jurisdictions that use release, 80 percent of defendants are released for the period of time, while on pretrial release, they are nonviolent.

Bail reform is underway. The decision to release a defendant for trial for trial has been made. The decision is based on a defendant's appearance at trial. In jurisdictions that use release, 80 percent of defendants are released for the period of time, while on pretrial release, they are nonviolent. In jurisdictions that use release, 80 percent of defendants are released for the period of time, while on pretrial release, they are nonviolent. In jurisdictions that use release, 80 percent of defendants are released for the period of time, while on pretrial release, they are nonviolent. In jurisdictions that use release, 80 percent of defendants are released for the period of time, while on pretrial release, they are nonviolent.
Many scholars view such a purpose as at least unworthy, and perhaps unconstitutional, although the Supreme Court has upheld preventive detention statutes. Others argue that such concerns may properly be a part of prior trial decision making since society has a strong interest in controlling crimes committed by those out on bail. Still others think effective predictors cannot be found that the problem of crime on bail can be attacked more effectively through other measures such as speedy trial process or by making crimes committed on bail a special offense subject to additional punishment.

Indeed, one approach to controlling crime on bail by responding to actual criminal offenses rather than trying to predict them in advance, as in preventive detention, was trialed in Baltimore. This "one bit of the apple" approach was incorporated into the 1984 Federal Bail Reform Act. It consists of two major components. First, the defendant's release order prohibits both failure to appear for trial and the commission of a crime while on bail. Second, nearest with probable cause constitutes evidence of unreliability and authorizes revocation of release in the pending case. Hence, in this approach, violation of the court's release order rather than anticipated future criminality is penalized.

Public policy in America is cyclical. Today the balance can be said to have shifted slightly in favor of public safety, a heretofore in recent years the interests of accused persons were paramount. Reforms have responded to public concerns and research findings. How you feel about bail and preventive detention may depend on whether you sympathize more with the point of view of public defenders and defendants or with that of prosecutors. Is the purpose of bail to protect the accused or to prevent crime? Can it do both?

References

Statutes
- The 1966 Bail Reform Act, 18 U.S.C. 3144 et seq.

Discussion Questions
1. Should the probability of the defendant's appearance at trial be the only matter considered when setting bail or establishing pretrial release conditions?
2. Should the likelihood that the defendant will commit additional crimes while on bail or pretrial release be taken into account?
3. Should the degree of crossing in a community, a jail be taken into account when pretrial release or bail decisions are made?
4. What do you think the term "preventive detention" means? What are the arguments for and against it?
5. A defendant who is held in jail until his trial suffers obvious disadvantages. The public suffers from crimes committed by defendants who are released before trial. How would you reconcile these conflicting interests in individual liberty and public safety?
6. If arrested persons are presumed innocent until proven guilty, how can the detention of defendants in lieu of bail be justified? Should it matter that police had probable cause to believe that the person was arrested?
END