

Federal Probation

Pretrial Release and Detention and Pretrial Services

- Pretrial Detention in the Criminal Justice Process *Vincent L. Broderick*
- Bail Bondsmen and the Federal Courts *James G. Carr*
- Pretrial Services—A Magistrate Judge's Perspective *Joel B. Rosen*
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This Issue in Brief

In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.

—United States v. Salerno, 107 S.Ct. 2095 (1987)

While it is impossible to predict future offender population levels with absolute precision, current Federal law enforcement policies and legislative initiatives lead everyone to agree that the number of new Federal offenders will continue to increase at a substantial rate. It is clear that the detention crisis will only become more severe if no action is taken to relieve the current situation. . . . If adequate bedspace to detain thousands of potentially dangerous prisoners is not acquired, public safety and the Federal Criminal Justice System itself could be threatened.

—Federal Detention Plan 1993-97 (United States Department of Justice, December 1992)

This is a special edition of *Federal Probation* devoted to the topics of pretrial detention and release and pretrial services. The two quotations above make an eloquent case for the timeliness and relevance of such an edition. The notion of depriving individuals of their liberty before they are proven guilty is one that deserves constant consideration and discussion by members of a free society. We hope this issue will provoke both.

The issue opens with a "call to arms" to persons actively involved in the criminal justice process—be they judges, probation or pretrial services officers, defense counsel, prosecutors, or prison officials—to use their knowledge and experience to foster effective approaches to the Nation's crime problem. Decrying what he calls a "Draconian" approach to alleviating crime, the Honorable Vincent L. Broderick, U.S. district judge, Southern District of New York, points out the folly in downplaying community corrections, fostering more prison construction, mandating longer prison terms, and enhancing the role of the criminal prosecutor while denigrating the role of the judiciary. In his article, "Pretrial Detention in the Criminal Justice Process," he focuses on accelerating detention rates as a prime example of "one troublesome manifestation of the Draconian approach."

What can bail bondsmen do for defendants that the courts cannot? Absolutely nothing, contends the

Honorable James G. Carr, U.S. magistrate judge, Northern District of Ohio, in his article, "Bail Bondsmen and the Federal Courts." Writing on the theme "corporate surety bonds fulfill no function and provide no service that cannot otherwise be accomplished within the framework of the Bail Reform Act, Judge Carr explains why releasing defendants on nonfinancial conditions imposed by the court is far preferable to involving bail bondsmen in the release process. He gives possible explanations for the perpetuation of bail bondsmen in some districts and urges pretrial services officers who continue to recommend surety bonds and judges who adopt such recom-

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Bail Bondsmen and the Federal Courts

BY JAMES G. CARR

United States Magistrate Judge, Northern District of Ohio

SECTION 3142(c)(1) of the Federal Bail Reform Act of 1984¹ lists the conditions that may be imposed on a defendant in order to secure release pending trial. Some of these conditions restrict the defendant's freedom of movement; others seek to control his activities, and others may cause treatment to be provided. A court may, as well, require financial conditions, such as a cash bond, property bond, or, pursuant to § 3142(c)(1)(B)(xii), "a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance" of the defendant.

The continued authorization in the Bail Reform Act for Federal courts to accept surety bonds or, as they are more commonly called, bail bonds, is an anomaly in a statute that otherwise incorporates many commendable reforms. Inclusion of bail bonds as a means of securing a defendant's appearance is, moreover, inconsistent with the express command of § 3142(c)(2) of the Act, which states that "the judicial officer may not impose a financial condition that results in the pretrial detention of the person."

According to statistics compiled since 1987 by the Administrative Office of the United States Courts, the use of corporate surety bonds is 50 percent less frequent than 5 years ago.² Nonetheless, bail bondsmen remain active in several Federal courts: During the year ended June 30, 1992, bail bonds were a condition of release in 2,497 cases.³ Although nearly 70 percent (1,721) of those bonds was imposed in just three districts,⁴ nearly three-quarters (570) of the other 776 bail bonds was imposed by 17 districts.⁵ During the same period, bail bonds played no role whatsoever in pretrial release decisions in 31 districts⁶ and a negligible role in the other districts.

Some districts with sizable criminal caseloads, such as Illinois Northern, Michigan Eastern, New York Eastern, New York Southern, and Pennsylvania Eastern, either have abandoned the use of bail bonds or set such bonds very infrequently.⁷ On the other hand, other districts with similarly large numbers of serious cases, including California Southern, Florida Middle, Florida Southern, New Jersey, Texas Northern, Texas Southern, Texas Western, and Virginia Eastern, use bail bonds with considerable frequency. There is, however, nothing in terms of caseload size, and appears to be nothing in terms of the likely nature of that caseload, to distinguish districts where bondsmen either play no role or an insignificant role from those

in which bondsmen remain active. A review of statistical profile records reveals no discernable difference in offense charged, offense level, prior record, or arrest status between those districts using bondsmen and those that do not use bondsmen.⁸

Two possible explanations for the continued presence of bail bondsmen in those districts in which they remain active are: (1) magistrate judges, who are responsible for setting conditions of release, and district judges, who review release and detention orders, use corporate sureties uncritically on the basis of local custom and practice, or (2) judicial officers believe that bondsmen will locate and return a defendant who absconds. Another explanation may be that pretrial services officers (or probation officers in those districts in which there is no separate pretrial services agency) likewise are merely responding to local custom and practice when they recommend surety bonds.

The purpose of this article is to encourage all Federal courts to eliminate the use of corporate surety bonds as a condition of release. Its theme can be stated straightforwardly: Corporate surety bonds fulfill no function and provide no service that cannot otherwise be accomplished within the framework of the Bail Reform Act.

This is a theme that has been asserted repeatedly and unanimously by others who have examined the operation of the bail bond system. One critic of the bail bond system wrote in 1965 that "Experience has amply shown that the bondsman's few legitimate functions can be filled better by other agencies."⁹ The 1968 American Bar Association Standards Relating to Pretrial Release stated, "The professional bondsman is an anachronism in the criminal process. Close analysis of his role indicates he serves no major purpose that could not be better served by public officers at less cost in economic and human terms."¹⁰ A 1976 study of bail reform concluded with the view that surety bail "does not perform any useful system function."¹¹ The 1980 version of the ABA Standards for Pretrial Release, which called for abolition of surety bonds, restated the view that "commercial bondsmen appear to be largely ineffective."¹² Law review commentators have agreed that "the bondsman lacks contemporary functional utility"¹³ and "it is difficult to ascertain any contribution of the commercial surety to the criminal process."¹⁴

In theory, the bail bondsman accepts payment from the defendant of a portion of a cash bond (usually 10 to 15 percent). If the defendant fails to

appear, the bond is forfeited, and the bondsman, if he fails to produce the defendant, will be required to pay the full face amount of the bond to the court. The bondsman's financial stake in the defendant's appearance is viewed as supplanting the defendant's own pecuniary interest in returning in order to claim a refund on the bond.

The theory is flawed in several respects and is rarely, if ever, fulfilled in practice. Historically, a defendant who posted cash bail was deemed to be likely to come to court because he had a financial stake—the bail that would be returned—in appearing for trial. Where the cash at risk is the bondsman's, the defendant no longer has a financial stake or pecuniary motivation to attend court. Regardless of the amount of the bond, it bears no relationship to any incentive not to flee.

It has also been suggested that some defendants who can afford the cost of a bail bond premium may also have the resources to flee.¹⁵ This may be particularly true in Federal cases, where relatively nominal bonds, of the sort that may be required to assure appearance in state court misdemeanor proceedings,¹⁶ are likely to be rare in view of the generally severe sentences that are commonplace under Federal law. Purchase of a bail bond, accordingly, not only fails to deter flight; it may also manifest the wherewithal to flee.

Whenever the defendant is able to pay a bondsman's premium, he has, moreover, endured a form of summary punishment. As has been noted, "payment of a bond premium to a bondsman provides an immediate sanction" that, though it "provides at least some punishment for the criminal act, . . . is antithetical to the theory and purposes of bail."¹⁷ The potentially punitive aspect of corporate surety bonds is even more directly apparent when the defendant is unable to raise the funds to pay the bondsman's premium. In that circumstance, the defendant, who has not been ordered detained and thus otherwise would be released, loses his liberty simply because of his inability (or that of his family) to pay the bondsman.

Though this circumstance has been described as a "blatant form of economic discrimination,"¹⁸ it has been held that a defendant's incapacity to raise the funds to purchase a surety bond does not violate the Bail Reform Act's proscription against the imposition of financial conditions that result in pretrial detention. In *United States v. Westbrook*¹⁹ the Fifth Circuit held that a defendant's financial inability to obtain a surety bond did not prevent his confinement pending trial. In the court's view, the trial court's determination that a secured bond was necessary manifested its finding that no less restrictive alternative was sufficient to ensure the defendant's appearance. The simple truth remains, however, that if the defendant had

had the resources to do so, he would have purchased his release by paying the corporate surety.

Historically judges were under no obligation to inquire into a defendant's financial resources before setting the amount of a cash bond. Although § 3142(g)(3)(A) of the Bail Reform Act requires a court, when setting conditions of release, to consider, along with the other enumerated factors, a defendant's financial resources, this consideration usually involves guesswork. This is particularly true where the defendant exercises the right not to disclose his financial condition, which can be a factor in computing the sentence under the sentencing guidelines. The statutory mandate to consider a defendant's financial resources is no guarantee that the court's assessment of the amount of a cash or surety bond will be appropriate or precise.

Once a corporate surety bond has been ordered as a condition of release, there is no assurance that the defendant, even if he is able to pay the premium, will obtain his freedom. The bondsman is not required to assume the risk that the defendant will not flee; he must, accordingly, assess that risk and elect to accept the premium. Not surprisingly, in evaluating this risk, the bail bondsman "looks into each defendant's criminal record, employment history, residence and family situation before deciding to post bail."²⁰

These are, of course, the principal factors to be considered under § 3142(g)(3)(A) by a Federal magistrate or district judge "in determining whether there are conditions of release that will reasonably assure the appearance of the person" for trial. Thus, as one study of bail bondsmen pointed out, "Most bondsmen admit using the same types of criteria utilized by bail reform projects, which emphasize the defendant's community ties and past criminal record" and ascertainment of the "strength of the state's case against the defendant."²¹

In making this decision, the bail bondsman is doing in his own interest what the judicial officer is required to undertake under the Bail Reform Act: He assesses the likelihood of flight in view of a variety of factors. The judge, however, acts within the framework of statutory and appellate control and is required by §§ 3142(h) and (i) to file a written opinion setting forth the reasons for either releasing or detaining the defendant. Where the judge imposes conditions that cannot be met, the defendant can seek reconsideration or appellate review.

The bondsman, who is "a private individual subject to none of the responsibilities or restraints imposed on the judiciary"²² and who "operates with an alarming absence of internal or external accountability,"²³ exercises discretion to accept or reject a defendant entirely free of outside control or oversight. Because "not even the Supreme Court can require the bondsman to post

bail for the accused,²⁴ these private functionaries, rather than judges, "hold the keys to the jail in their pockets. . . . The court and the commissioner are relegated to the relatively unimportant choice of fixing the amount of bail."²⁵ Even under the Bail Reform Act, use of a corporate surety bond enables the judicial officer's approval of release to be "defeated by the caprice of the bondsman, who can refuse to provide bail for good reasons, bad reasons, or no reasons."²⁶ The "power to refuse bail is the power to negate the whole bail system as it is conceived as part of our administration of law."²⁷

At no other stage of the criminal process is the judicial power, which usually is vigorously guarded and jealously exercised, so diminished by its own hand as when it allows a bondsman to determine whether to release or detain a defendant. Whether a defendant who otherwise qualifies for release obtains his or her pretrial freedom "should not be based on the whims and vagaries of commercial bondsmen whose operational strategy is centered on financial gain rather than the interests of the individual accused."²⁸

Unlike judges, moreover, "bondsmen are not concerned about the possibility that released defendants might be rearrested on new charges while at liberty."²⁹ Historically, judges could set bail "at an unattainably high amount in order to imprison a person who present[ed] a particular danger to society if left free before trial."³⁰ Under the Bail Reform Act and the express authority of § 3142(e), which permits a judge to conclude that there are no conditions of release reasonably likely to assure community safety, the motivation to use a cash bond as a means of accomplishing preventive detention should have been eradicated. Where, however, a bail bond is used as a condition of release, there is the danger that the judge either consciously or unconsciously is disregarding the obligation under the Bail Reform Act to consider the issue of preventive detention on its own merits. In that circumstance, there will be no detention order that provides a basis for reviewing the decision to keep the defendant in custody.

Moreover, when the judge has subsumed the issue of preventive detention sub silentio in the decision to allow purchase of a bail bond, society's interest in avoiding the risk of further criminal acts receives no additional consideration when the defendant pays the premium. The bondsman's only concern is risk of flight, not community safety.

Not only does the bondsman consider the same factors in assessing risk of flight that a court is to consider (while concurrently disregarding the issue of community safety), he is likely to avail himself of some of the same methods of ensuring return for trial that are available to the court under the Bail Reform Act.

Principal among these is a pledge of real estate from either the defendant or his family or friends. By demanding such pledge, the bondsman, just like a court when it conditions release on the posting of a real property bond, seeks to accomplish two purposes: first, to provide the defendant with a personal (or, where the property comes from other persons, a moral) stake in appearing for trial; and, second, where others have posted their real estate, to cause the property owners to protect their own interests by keeping tabs on the defendant and ensuring his appearance.

The protection afforded to the party who provides the property to secure a bail bond is probably less, however, than the protection that would be available if the property were posted directly with the court. Where an owner posts property with the court, he or she is entitled to a forfeiture hearing and a judicial finding that forfeiture is necessary and appropriate.

Where a bondsman has accepted property as collateral, no similar restraints or procedures protect the property owner from loss of the property to the bondsman to cover the amount of the bond. In any event, as with the decision whether to accept a defendant's premium, the bail bondsman's "decisions to require collateral or to set the amount of collateral are not controlled by the judicial system."³¹

Moreover, once the bondsman has accepted collateral, he has no other means of controlling the defendant's activities and ensuring his appearance at trial. A court, on the other hand, can take several steps to enhance the likelihood of appearance. The defendant can be released to the custody of a third party, who can be encouraged to fulfill his or her obligations with the prospect of contempt proceedings if he or she fails to do all that is reasonably possible to ensure the defendant's appearance. A court can, as well, impose and enforce other restrictions on a defendant's residence, travel, associations, and other activities. These conditions can vary in their stringency from the modest restriction of a curfew to the restraint of house arrest with electronic monitoring.

In addition, a court can include supervision by a pretrial services agency among its conditions of release. Such supervision can encompass more than periodic contact with the defendant and can include encouraging the defendant to secure or keep employment and arranging programs of rehabilitation and treatment.

If the court deems imposition of a direct financial condition to be necessary or desirable it can, moreover, give the defendant a direct financial stake in returning by conditioning release on the deposit of 10 percent of the total amount of the bond with the clerk of court. Instead of compelling the defendant to pay a nonrefundable premium to the bondsman, the court en-

hances the likelihood of appearance because the defendant has the prospect of having his money returned at the conclusion of the proceedings. The expectation that the funds thus posted will be returned gives the defendant a greater stake in appearing than if he had simply paid the monies to a bail bondsman.

To be sure, if the defendant fails to appear after posting a percentage bond, the court in all likelihood will not be able to collect more than the funds already on deposit. At least arguably, the court, had it insisted on a corporate surety bond, would have been able to recover the full amount of the bond from the bondsman. This is, however, an argument without substance, in view of the infrequency with which bond forfeitures have been imposed.³² Indeed, it has been suggested that "a policy of strict and uniform enforcement of forfeited bail bonds . . . would probably lead to a considerable increase in the number of persons unable to gain release on bail,"³³ because bondsmen would be compelled to require full collateral, which would not be possible for many defendants. Thus, continued use of bail bondsmen in place of a percentage deposit system cannot be justified on the basis that the bondsman stands behind his obligation to pay the balance of the bond if the defendant flees.

In any event, Federal courts under the Bail Reform Act can impose a broad range and variety of conditions to reduce the risk of flight. None of these conditions is available to a bondsman. His only means of seeking to assure appearance is whatever collateral he may have taken from the defendant or his family or friends. Few, if any, bondsmen have the ability or the desire to supervise the defendants whose release they have secured,³⁴ and bail bondsmen "do very little in terms of service."³⁵ Even if a bondsman seeks to maintain some informal contact with the defendant, such efforts "are aimed at protecting investments and maximizing profits,"³⁶ not providing the service to the defendant and protection to the public that can be accomplished through supervision by a pretrial services agency. Moreover, unlike a pretrial services officer, a bail bondsman does not have the authority of a court order to give credence and strength to any such efforts that he may undertake. Success, accordingly, is far less likely and far more haphazard than will occur with court-ordered and pretrial services-implemented supervision.

On occasion, a court may require a surety bond while also imposing other conditions of release. When that occurs, the inclusion of the surety bond provides no greater control over the defendant. The money he expends in purchasing the bond could have been deposited with the court, which would have created a

financial stake in appearing. Any collateral demanded by the bondsman could likewise have been posted with the court.

The only consequence of using a surety bond along with other conditions of release is that the decision about whether the defendant will in fact be released has been delegated by the court to the bondsman. Such delegation is entirely inappropriate in view of the structure of the Bail Reform Act, which places responsibility for the decision to release or detain in the hands of the judge.

The principal function of a bail bondsman is to ensure appearance at trial. Aside from conclusory assertions about the ability of bail bondsmen to seek out and apprehend defendants after they have fled,³⁷ the claim that private agents can do a better job of finding and returning fugitives than Federal and local law enforcement officers has never had empirical support. Indeed, "virtually every major independent study of bondsmen confirms" the finding that bondsmen "are relatively passive about overseeing the appearance of their clients."³⁸

It is not surprising that there is a consensus that "in practice bondsmen do little or nothing to return their charges"³⁹ and "the only benefit they seriously claim to confer—that of catching persons who jump bail—is largely illusory."⁴⁰ In an era of NCIC, instantaneous communication, and ever-improving methods of ascertaining and verifying identities, the claim that bail bondsmen are able to respond more effectively than Federal law enforcement agencies to a defendant's flight is more implausible and less tenable than ever.

In any event, if a bail bondsman undertakes to locate a fugitive, his activities are entirely extra-judicial. "The bondsman," as one commentator has noted, "is subject to less controls and is possessed of greater powers than is the law enforcement officer who would exercise counterpart functions."⁴¹ A bail bondsman, "untrained in arrest procedures . . . may therefore do that which the qualified police officer performing under color of uniform cannot."⁴² No police officer "possesses the degree of legal authority over citizens that the bondsman holds and occasionally wields over his customers."⁴³

A Federal law enforcement officer must, if able, obtain a warrant before entering private premises to effectuate an arrest,⁴⁴ bring the arrestee without unnecessary delay before the nearest available Federal magistrate,⁴⁵ and submit to a removal hearing before returning a fugitive to a distant jurisdiction.⁴⁶ Although fugitives are not excluded from the benefits of the Fourth Amendment, the Due Process Clause, and Federal Rules of Criminal Procedure, none of these restraints are imposed on bail bondsmen. Even if the bondsman's extraordinary powers had never been

abused,⁴⁷ "one would be hard put to think of a function less appropriately delegated to private persons than the capture of fleeing defendants."⁴⁸ It is, as well, "especially odious in a free society to unleash an army of private citizens with virtually unfettered police power."⁴⁹

There is, finally, the corrupting influence that bondsmen may play in the criminal process.⁵⁰ Even if, as the 1980 ABA Standards for Pretrial Release suggested, "the extent of corruption involving compensated sureties has been exaggerated,"⁵¹ the mere presence of the bail bondsman can engender a "go along, get along" relationship between the courts and their officers and corporate sureties.⁵² Even quite recently allegations of corruption involving bail bondsmen in the Superior Court of the District of Columbia have been asserted.⁵³

Conclusion

There is nothing that bail bondsmen do that the Bail Reform Act does not permit courts to do; and there is a great deal that courts can do that bail bondsmen cannot undertake or accomplish. Most importantly, there is a greater assurance, when a defendant is released on nonfinancial conditions that are imposed and monitored by the court or its officers, that he or she will appear for trial.

Why, then, do bail bondsmen remain in business in Federal courts? They remain a feature of our Federal criminal justice system, in my opinion, because the other participants in the system have failed to challenge their presence. The fault lies, in part, with pretrial service officers who continue to recommend surety bonds. It lies even more strongly with the magistrates and district judges who adopt such recommendations or, worse, who set bail bonds as a condition of release on their own accord.

Bail bondsmen play no role in more than 30 districts, and they are an insignificant feature in all but 20 other districts. In urging magistrates and judges in that minority of districts that continue to use bail bondsmen to stop doing so, I am not proposing a radical or untried experiment. I seek, rather, to point to the fact that most Federal judicial officers find corporate surety bonds unnecessary and to encourage the rest of the Federal judiciary to emulate that example.

The fact that the Bail Reform Act permits use of bail bonds does not mean that bail bonds either should or need be used as a condition of release in a Federal criminal proceeding. Bail bondsmen have survived in Federal courts only at the sufferance of Federal judges. It is time for us to be less tolerant.

NOTES

¹18 U.S.C. §3142(c)(1).

²For the year ended June 30th, bail bonds were imposed as a condition of release in the following percentage of cases activated by pretrial services officers: 1987, 10.5 percent; 1988, 7.8 percent; 1989, 7.0 percent; 1990, 4.7 percent; 1991, 6.2 percent; 1992, 4.3 percent. H Tables-Pretrial Services Act, Statistics Division, Administrative Office of the United States Courts (Fiscal Year 1992) (Table H-3).

³Id.

⁴California Southern (952), Florida Southern (526), and Texas Middle (243).

⁵Arkansas, 17; Arizona, 11; California Central, 22; Florida Middle, 65; New Jersey, 43; Mississippi Southern, 34; Ohio Northern, 24; Oklahoma Northern, 10; Pennsylvania Western, 10; South Carolina, 25; Tennessee Eastern, 12; Tennessee Western, 82; Texas Northern, 79; Texas Southern, 70; Virginia Eastern, 27; Virginia Western, 33; Washington Eastern, 10.

⁶Alabama Middle, Colorado, Delaware, Florida Northern, Georgia Middle, Idaho, Illinois Northern, Illinois Central, Indiana Northern, Iowa Northern, Iowa Southern, Kentucky Western, Maine, Massachusetts, Montana, Nebraska, North Carolina Eastern, North Carolina Middle, North Dakota, Oregon, Oklahoma Eastern, Puerto Rico, South Dakota, Tennessee Middle, Utah, Vermont, Virgin Islands, West Virginia Southern, Wisconsin Eastern, Wisconsin Western.

⁷Corporate surety bonds were used during the year ended June 30, 1992, in no cases in Illinois Northern, once in Michigan Eastern and New York Eastern, and four times in New York Southern and Pennsylvania Eastern. These districts had a total of 7,426 pretrial services cases activated in that time period. H Tables-Pretrial Services Act, Statistics Division, Administrative Office of the United States Courts (Fiscal Year 1992) (Table H-5).

⁸Pretrial Services Statistical Profile for Closed Pretrial Services Records for October 1991 through September 1992.

⁹Goldfarb, Ransom, A Critique of the American Bail System 125 (1965).

¹⁰ABA Project on Minimum Standards for Criminal Justice: Standards Relating to Pretrial Release 64-65 (1968).

¹¹Thomas, Bail Reform in America 254 (1976).

¹²ABA Project on Minimum Standards for Criminal Justice: Standards Relating to Pretrial Release 10-5.5 (1980).

¹³Hansen, The Professional Bondsman: A State Action Analysis, 30 Cleve. St. L. Rev. 595, 599 (1981).

¹⁴Comment, Bail and Bail Bondsmen: Need for Reform in Kentucky, 61 Ky. L.J. 601, 616 (1973).

¹⁵Wice, Freedom for Sale: A National Study of Pretrial Release 5 (1974).

¹⁶See Goldfarb, *supra* note 9 at 32.

¹⁷Gambitta & Hitchings, Bail Bond Forfeiture Enforcement: The Mechanism and the Mirage, 11 Am. J. Crim. L. 233, 279 (1983). See also Goldfarb, *supra* note 9 at 72.

¹⁸Wice, *supra* note 15 at 98.

¹⁹780 F.2d 1185 (5th Cir. 1992).

²⁰Id.

²¹Wice, *supra* note 15 at 56.

²²Note, Bail: An Ancient Practice Reexamined, 70 Yale L.J. 966, 971 (1961).

²³Hansen, *supra* note 13 at 600.

²⁴Comment, 61 Ky. L.J., *supra* note 14 at 612.

²⁵*Pannell v. United States*, 320 F.2d 698, 699 (D.C. Cir. 1963)(Wright, J., concurring).

²⁶Goldfarb, *supra* note 9 at 115.

²⁷*Id.* at 116.

²⁸Comment, 61 Ky. L.J., *supra* note 14 at 612.

²⁹Dill, Discretion, Exchange and Social Control: Bail Bondsmen in Criminal Courts, 9 Law & Soc. Rev. 639, 654.

³⁰Goldfarb, *supra* note 9 at 12.

³¹Comment, 61 Ky. L. Rev., *supra* note 14 at 611.

³²See, e.g., Wice, *supra* note 15 at 60-61; Dill, *supra* note 29 at 664-65; Gambitta & Hitchings, *supra* note 17 at 257-76; Note, 70 Yale L.J., *supra* note 22 at 968.

³³Dill, *supra* note 29 at 664.

³⁴Wice, *supra* note 15 at 58.

³⁵Goldfarb, *supra* note 9 at 101.

³⁶Dill, *supra* note 29 at 654.

³⁷See Hearings on Bail Reform Before the Subcommittee on the Constitution of the Senate (Committee on the Judiciary at 205 (Statement of Jerry Watson).

³⁸Gambitta & Hitchings, *supra* note 17 at 280.

³⁹ABA Standards, *supra* note 12 at 10.87.

⁴⁰Thomas, *supra* note 11 at xi.

⁴¹Goldfarb, *supra* note 9 at 116.

⁴²Hansen, *supra* note 13 at 602.

⁴³Dill, *supra* note 29 at 666.

⁴⁴*Payton v. New York*, 45 U.S. 573 (1980); *Steagald v. United States*, 451 U.S. 204 (1981).

⁴⁵Fed. R. Crim. P. 5(a).

⁴⁶Fed. R. Crim. P. 40.

⁴⁷*But see* Goldfarb, *supra* note 9 at 118; Comment, 61 Ky. L.J., *supra* note 14 at 605-08 (discussing reported decisions involving abuses by bail bondsmen).

⁴⁸ABA Standards, *supra* note 12 at 10-88.

⁴⁹Note, 70 Yale L.J., *supra* note 22 at 972-73.

⁵⁰See, e.g., Goldfarb, *supra* note 9 at 109-15.

⁵¹1980 ABA Standards for Pretrial Release, *supra* note 12 at 10-87.

⁵²See Gambitta & Hitchings, *supra* note 17 at 282.

⁵³*United States v. Thomas Lindsey*, Case Number F-12119-92, Superior Court of Washington, DC. Defendant Lindsey, a clerk of the court, was charged with destroying outstanding bond forfeiture entries in 40 criminal cases involving three bail bonding companies. On December 11, 1992, he pled guilty to a reduced charge of miscellaneous felony and agreed to cooperate with an ongoing investigation by the United States attorney involving the three District of Columbia bail bonding companies. Sentencing is scheduled before the Honorable Judge Eric Holder on February 5, 1993. See *The Washington Post*, December 9, 1992, p. A24