Judicial Interim Release (Bail): A Study of Decision-Making in The Winnipeg Provincial Judges Court.

by

SENG SHUOW TING

A thesis
presented to the University of Manitoba
in partial fulfillment of the
requirements for the degree of
Master of Arts
in
Department of Sociology

Winnipeg, Manitoba

ISBN 0-315-34070-3

JUDICIAL INTERIM RELEASE (BAIL): A STUDY OF DECISION-MAKING IN THE WINNIPEG PROVINCIAL JUDGES COURT

BY

SENG SHUOW TING

A thesis submitted to the Faculty of Graduate Studies of the University of Manitoba in partial fulfillment of the requirements of the degree of

MASTER OF ARTS

I hereby declare that I am the sole author of this thesis.

I authorize the University of Manitoba to lend this thesis to other institutions or individuals for the purpose of scholarly research.

SENG SHUOW, TING

I further authorize the University of Manitoba to reproduce this thesis by photocopying or by other means, in total or in part, at the request of other institutions or individuals for the purpose of scholarly research.

SENG SHUOW, TING

The University of Manitoba requires the signatures of all persons using or photocopying this thesis. Please sign below, and give address and date.

ABSTRACT

This thesis attempted to ascertain whether discriminatory practices prevail in the administration of pretrial release decision after the Bail Reform Act of 1972 in Winnipeg Provincial Judges Docket Court. Consequently, this research focused on two pretrial release decisions: (1) types of release condition, ordered according to restrictiveness from release on undertaking to release on own recognizance; and (2) if surety is requested, the amount of surety requested from those for whom a surety is the release condition. In addressing the issue of pretrial release decision, the conflict theoretical perspective was adopted.

The study analyzed data of offenders charged with either indictable or summary offences in the Criminal Code of Canada. A nonrandom sample of 435 cases from the two courts at the Public Safety Building was used for the analysis. The data of these cases were obtained from the files kept in the Police Court Unit department.

Treating statutory laws as defining the category of legal variables, this study found that legal factors - prior conviction and seriousness of the offences - substantially affect decisions on the types of pretrial release. Number of Charges was found not to be significantly related to pretri-

al release decisions. Factors not prescribed in statutory, that is extra-legal variables - sex, race and socioeconomic status - were found to have minimal impact on pretrial release decisions.

The main conclusion that can be drawn from this study is that, by and large, in this phase of the criminal justice process discriminatory practices were not found. In addition, findings from regression analyses showed that support for the conflict theory in this particular instance is weak.

ACKNOWLEDGEMENTS

The data for this study were obtained from the Police Court Files at the Provincial Judges Court in the Public Safety Building. Gratitude is extended to the personnel in this department who assisted me in the data collection. In addition, appreciation goes to personnel working in the office of the Clerk of the Court, who enlighted me regarding the reality in the functioning of the Court System.

My greatest debt of gratitude is owed to my principal thesis advisor, Professor Stuart Johnson, whose patience, forebearance, understanding and encouragement throughout the entire process contributed invaluably to the completion of this thesis. In addition, the critical and sightful comments and direction of Professor Steve Brickey during the different stages of the thesis development were greatly appreciated. Indebtness is also extended to the external member of my committee, Professor Ranesh Tiwari, for his unfailing support and assistance in his area of expertise. If, despite all this invaluable and generous counsel, anything dubious remains, responsibility for that is mine alone.

Gratitude is also extended to all the staff and graduate students in the Department of Sociology for their forebear-

ance during some of the more trying periods in the development of this thesis. In this regard, I would like to thank Chez-Roy Birchwood and Timothy Wong for their support and encouragment when I needed them most.

Finally, this thesis is dedicated to my Mom and Dad, without whom I would not have committed myself so tenaciously to the completion of my task, and to Bonnie, who has always unfailingly stood by me.

CONTENTS

LIST OF TABLES

Chapter I

INTRODUCTION

Bail or judicial interim release is a legal means of freeing a defendant from detention before court hears criminal charges against him. Its prime objective is to compel the defendant's appearance by the threat of economic forfeiture for failure to appear at a stipulated date and time. The purpose of this study is to ascertain, if any, the existence of inequality in the administration of bail in Winnipeg. It is this writer's contention that extra-legal attributes bear heavily upon bail decisions, especially on the types of release condition offered and the amount of money requested.[1] Consequently, this research focuses on two pretrial decisions: (1) type of release condition, ordered according to restrictiveness from release on undertaking to release on own recognizance; and (2) if surety is requested, the amount of surety requested from those for whom a surety is the release condition. In addressing the issue of bail, the current study employs the conflict perspective in exploring the administration of bail after The Bail Reform Act

---

[1] The term extra-legal attributes is used in this study to refer to perceived characteristics of the offender that are legally irrelevant to judicial considerations in arriving at a legal decision. Legal variables refer to those factors which are specifically prescribed in the relevant statutory law.

of 1972.

It is commonly recognized that the threat of jail or detention has frequently been used to deter would-be violators from succumbing to a moment's temptation. But, for many unfortunate enough to become involved with the law, one does not have to be guilty of anything to be remanded to detention or jail. To be accused is sufficient, in some cases, to assure oneself a place in the detention centre. Once admitted to pre-trial detention, the accused is detained in a room full of strangers who are at best not friendly, and at worst physically or sexually threatening. Prior to the 1972 bail reform act, if the accused had enough money, he could afford to pay for a bail bond to obtain release. If he was poor, he didn't get out. It was often the poor who were affected by bail procedures linked to financial means.

The objective of this paper falls within the boundaries of one substantive area known as the sociology of law. The sociology of law has been described as the study of "that part of the sociology of the human spirit which studies the full social reality of law, beginning with its tangible and externally observable expressions, in effective collective behaviours and in the material basis" (Gurvith, 1973:48). In simple terms, it can be described as the study of law and society and some aspects of human behaviour. Schur astutely expresses the study of law as the "analysis and understanding of the legal system as such, rather than the mere recog-

nition of legal aspects in related areas of social life, that is the primary concern of the sociology of law" (1968:4). Chambliss and Seidman (1982), in expanding this viewpoint, suggest that at the very heart of the study of law and society is to "learn from one unique situation something useful for solving another problem in another place, involving different people ... (and) using empirical investigations of social science that ineluctably deal with past events in order to understand and guide problem-solving in the future" (1982:12). Clearly the preceding comments place the current enterprise well within the framework of the sociology of law.

1.1 SIGNIFICANCE OF THE STUDY

The impetus for this paper was the result of the writer's exposure to the intricacies of the magistrate court system in Winnipeg. In observing the conveyor-belt functioning of the legal system, the problematic nature of the bail system became evident. Arthur Beeley adequately concluded the first rationale for this study when he claimed that in the United States the system of bail is "lax with those with whom it should be stringent and stringent with those with whom it could safely be less severe" (1966:160). To determine to what extent the above comment is relevant to Winnipeg is the primary task at hand.

In examining the bail system, it was the writer's intention to extend the existing socio-legal literature in this rather neglected, but important, area in the criminal justice system. Frazier et al., (1980) points out that "research on pretrial release and bail setting is less common, though no less important, than studies of other decision stages in the criminal justice process". Considerations ranging from the defendant's rights and practical matters to constitutional issues, argue Frazier et al., combine to make this stage in the criminal justice process a critical area for empirical study (1980:163). It is with the above in mind that this thesis attempted to draw attention to the administration and quality of criminal justice in Winnipeg. It is in the lower courts, or the provincial courts of the judicial system, which handle the bulk of the criminal cases, that the law is most frequently applied.

If this study finds the existence of unequal treatment of the defendants in the lower courts, it might generate substantial interests for further fine-tuning the legal system. This fact is critical in the understanding of the legal process, because pre-trial release decisions affect subsequent criminal justice processing decisions throughout the system (example, Bernstein et al., 1977a; Hagan et al., 1980). Consequently, the study of bail decisions is interesting both in its own right and as an important aid to understanding how defendants come to be differentially situated at

later stages of their cases. Finally, the findings from this exploratory study may shed new light on the factors that are taken into consideration in arriving at judicial decisions in lower courts.

1.2 HISTORICAL OVERVIEW

The institution of bail in Canada is not a recent phenomenon. Its origin can be traced from a practice which dates back to pre- Norman England. The original raison d'etre for bail is not altogether certain. However, it can be infered that ad hoc arrangements between sheriffs and the accused for personal appearance at trial started as a way to relieve the sheriffs of the cost and trouble of keeping people in the local jails until visiting justices arrived on the scene to try them (Salhany, 1984:98). Prisoners were released to the custody of personal friends or acquaintances who would vouch for their appearance for trial, and offered themselves as hostages if the accused failed to appear. The logic that underpinned the institution of bail was the belief that the conditions for release operate as a collateral to ensure that the accused would appear for trial on a stipulated date, with a third party acting as surety. This belief in the collateral function of the institution of bail has not changed to this day.

A case in point is the conventional ways in which the term bail is used. It is used to describe a contract under-

taken between the accused and the court, whereby the accused promises to appear in court to stand trial. It also involves a contract between the surety and the court, whereby the surety promises to deliver the accused in court to stand trial. Furthermore, bail denotes the security which is furnished, or the amount agreed to be forfeited by the surety if the accused fails to appear. In the Canadian Criminal Code, pretrial release (bail) implies the release of the accused from custody, without deposit of money of property, on his own undertaking for most summary offences.[2]

1.2.1 The Old System of Bail

The Canadian Bill of Rights, 1960, and now the Charter of Rights and Freedoms, 1982, (see appendix B) guaranteed the right of a person accused of a crime to seek reasonable bail before trial. This right is also specially provided for under the Criminal Code (Criminal Code of Canada - section 457).

Under the provision of the former sections of the criminal code as they stood prior to their amendment by the Bail Reform Act, 1970-71, an accused could appear before the

---

[2] In the United States, the law and practice with respect to bail, developed along lines quite different from those in Canada. The professional bondsmen performed a valuable role as sureties. According to Goldfarb (1965), America was a new land inhabited by many new people with no roots, or long-standing relationship with each other. Without long-standing personal friends or relatives the professional bondsmen were a welcome substitute.

Court in several ways:

1. As a result of a summons issued by a justice.
2. As a result of an arrest without warrant.
3. As a result of an arrest with a warrant, issued normally by a justice. (Barton and Peel, 1983:95).

Upon the accused's appearance in court, the right to bail was a matter solely for the discretion of the justice of the peace, magistrate, or judge before whom the application was brought. In deciding whether to grant bail, the guiding principle was the likelihood of the appearance of the accused during his trial. If bail was granted by the judge, then the terms would be set for the release of the accused (Salhany, 1984).

Several problems were generated as a consequence of the monopoly of power in the granting or refusal of release by the judge, and by the absence of an adequate guidelines in setting terms of release. Judicial monopoly of power to release resulted in many accused, who had been arrested for summary conviction offences, being held in custody prior to their trial. In addition, the lack of adequate guidelines in setting terms of release resulted in conditions of release which were financially unattainable for many defendants (Barton and Peel, 1983). Since money deposits or other valuable security were often required as terms for release the amount of cash deposit was frequently set at

such a high figure that the defendant was unlikely to be able to meet it (Friedland, 1965; Wice, 1974). The Bail Reform Act (1972) was an attempt to remedy the problems in the existing release system.

1.2.2 The New System of Pretrial Release

On March 22nd, 1971, the House of Commons implemented substantial amendments to the Criminal Code in a legislative package known generally as the Bail Reform Act of 1972.[3]

The Bail Reform Act was created as the result of the report of the Canadian Committee on Corrections, commonly known as the Ouimet Report, which had tabled its recommendation several years earlier. The new provisions on judicial interim release were essentially superimposed on the old provisions. Where once the power to release an arrested person had been the sole prerogative of a judicial officer (magistrate or judge), now some of this power was transferred to the peace officer who made the initial arrest. The purpose of the partial transfer of power to the peace officer was to impose upon the arresting officer the duty of releasing the accused unless there exist reasonable and probable grounds for detention.[4]

[3] It may be of interest to note that although the new Act is called the Bail Reform Act, curiously the word "Bail" is not used in the Act itself.

[4] This transfer of power is partial because for specific offences, such as those under section 50 to 53 (treasonable offence), section 76.1 to 76.3 (aircraft hijacking offenc-

Major changes in the Bail Act (1972), also occured with respect to interim release hearings. In this area of interim release hearings, a major recommendation of the Ouimet Committee which subsequently became law, was placing the onus of justifying pre-trial detention for most offences on the prosecutor rather than on the accused as had been the case before (Stenning, 1986:220). Section 457(7) of the Criminal Code establishes statutory guidelines for the prosecutor in determining whether or not the detention of the accused is justified. Certain steps must be followed before custody or release on more onerous conditions can be justified.

Firstly, on primary ground, the prosecutor must satisfy the judge that detention of the accused is necessary to ensure his attendance in court (Section 457 [7] {a}). If it is established by the justice that detention of the accused on primary ground is unjustified, then the prosecutor must consider detention on secondary ground. Secondary ground falls under section 457(7)[b] which refers to detention of the accused in the public interest or for the protection or safety of the public. Secondary ground referred to in section 457(7)[b] was not reached unless the Crown failed to justify detention on primary ground.

---

es), and section 457.7[1] (non-capital offences), no court other than a judge of a superior court of criminal jurisdiction for a province may release an accused.

If the prosecutor fails to show cause why the accused should be detained, then, the justice is required to release the accused upon his giving an undertaking to appear without conditions (Section 457[1]).

There are six possible outcomes of the interim bail hearings.

1. Release on undertaking, without conditions.
2. Release on undertaking, with conditions.
3. Release on recognizance, no sureties, with or without conditions, but without deposit.
4. Release on recognizance with or without condition, with sureties, but without deposit.
5. With the prosecutor's consent, release on recognizance, with or without conditions, without sureties, but with deposit or money or other valuable security.
6. Custody ordered. (Section 457[2].

It is clear from the wording of section 457(2) that it is considered more onerous to require a deposit of money for release than to require the accused to find a surety. Therefore, once the justice concludes or decides that the accused should be released, but should not be released unconditionally, it is his/her duty to inquire whether the accused can meet whatever conditions that are required (Salhany, 1984). For example, if the justice decides that the accused should post a cash deposit, it is improper to set

such a high figure that the accused is unlikely to meet it. To do so would in effect deny him the right to "reasonable bail", which is guaranteed by the Charter of Rights and Freedom, 1982.

In 1976, the burden upon the Crown to show cause was eased somewhat with the enactment of Bill C-71. The onus has now shifted to the accused, in certain circumstances, to establish why he ought to be released. This reverse onus clause is applicable under section 457(5.1) when the accused is charged with:

1. an indictable offence (other than an offence mentioned in s. 457.7), allegedly to have been committed while he was at large awaiting trial for another indictable offence;
2. an indictable offence (other than an offence mentioned in s. 457.7), and a citizen or subject of a country other than Canada or is not ordinarily resident in Canada;
3. an offence under section 133(2) to (5) that is alleged to have been committed while he was at large awaiting trial for an offence, other than offence in section 457.7; and
4. an offence under section 4 or 5 of the Narcotic Control Act or the offence of conspiracy to commit an offence under those sections of the Act.

After the enactment of the Charter of Rights and Freedoms, 1982, this section (reverse onus) of the Code came under attack as an infringement of section 11(e) of the Charter (see Appendix B). It has recently been held, however, that section 457(5.1) does not derogate section 11(c) and is justifiable in a free and democratic society (Salhany, 1984:106; Stenning, 1986:220).

In summary, on January 3rd, 1972, the Bail Reform Act replaced the previous provisions of the Criminal Code relating to arrest and pretrial release with the incorporation of more precise statutory guidelines in considering pretrial release decisions. The general objectives of this reform were to avoid unnecessary arrests, and if the accused was arrested, to ensure early pretrial release. If however, the accused was not released, it was intended to avoid a long delay in bringing him to trial; or if he was convicted at trial, to encourage release pending appeal. Although recent amendments to the Criminal Code (as noted earlier) after the 1972 Bail Reform Act, have attempted to ensure more equitable administration of bail, discretionary power of the judges/magistrates have not been eliminated. This is apparent from the use of the word 'may' in sections 451 and 465 of the Criminal Code which indicated that bail is discretionary in cases of both indictable and summary conviction offences. But the question of concern here is whether discretion leads to discriminatory administration of bail against certain de-

fendants is the task at hand. In brief, the basis in law for bail has always been to ensure the appearance of the accused at the time and place when and where he/she is to be tried and the court should consider the circumstance of each case with only this objective in mind.

Chapter II

LITERATURE REVIEW

The abuses and misuses of the bail system which have come to the fore in the 1970's and 1980's are not new. As early as the 1960's, studies of the utility and effectiveness of the bail system had been conducted by Arthur Beeley in Chicago (1966), and M. Friedland in Toronto (1965). Gertrude Samuels in the New York Times Magazine, wrote, "the root of the evil, say many experts on court and correctional practices, is the institution called bail" (1962:130). Similarly, Caleb Foote commented that the system of bail has been a "factor of economic and class discrimination" (1959:43).

In response to the overwhelming concern raised by these scholars over the abuses and inequities of the bail system, The Manhattan Bail Project was started in October 1962. The idea originated from an outraged citizen---Louis Schweitzer, who was shocked over the inability of many (especially the poor) to make bail. According to Gertrude Samuels (1962), the inability to make bail for the poor inevitably makes poverty a crime. The Manhattan Bail Project was a significant first step in attaining the long awaited reform of the existing bail system.

The subject also was of interest to the then Attorney General of the United States, Robert F. Kennedy, who subsequently convinced the Justice Department to sponsor and conduct a national conference on bail in 1964. This conference appeared to generate an interest and propensity for bail reforms in the United States. The spirit of this bail reform movement was felt across the American border.

The effects of extra-legal variables in determining bail decisions in Canada was first investigated by Friedland's examination of bail practice in Toronto. In Detention Before Trial, Friedland commented that, "there has been no previous examination of our bail system, with the result that no one has an accurate idea of the utility or effectiveness of its operation" (1965:3). In an attempt to remedy this gap in bail research, Friedland's study covered all criminal cases (almost 6,000) tried in the Magistrates' Courts in Toronto in a six month period from September 1961 to February 1962.

One of the main findings of the study in Toronto and one in which the author was most definite was that the bail system was not functioning properly. There was a general lack of awareness by the Magistrates concerning the purpose of bail. The upshot of this weakness was the setting of bail at standard amounts rather than according to the likelihood of the accused appearance for trial. Consequently, more than half of the offenders did not raise the bail set at the

first appearance. This further leads to more accused, especially the lower social class, being detained in custody prior to trial.

Related to the above practise of setting bail at standard amounts rather than according to the likelihood of appearance, was the addition finding that a relationship existed between custody and the outcome of the trial. Accused released on bail had a much better chance of being acquitted than the accused who has to remain in custody. Friedland concluded by advocating the need for a review of the bail system.

P. K. McWilliams, in the article entitled, "The Law of Bail", states that the admission to bail is a calculated risk which the law takes as a price of our system of justice (1966/67:23). He claimed that due to the lack of fundamental changes in the nature of the bail system since its inception in 1866, "power is placed into certain hands which can be easily and, perhaps, unwittingly abused" (1966/67:30). In this respect, Professor McWilliams cited the case of R. v. Rose, where the accused was charged with rape committed while he was out on bail on an earlier similar offense. The learned Judge consented to the bail application because he felt that the Crown counsel opposed bail so as to punish the accused. To the contrary, Professor McWilliams critically pointed out that Crown's opposition to the accused bail application was not to punish, rather "to

protect the maidens of Saskatchewan" (1966/67:31). However, in the context of R. v. Rose case, the court considered personal liberty to be the only interest to be protected as compared to public interests. Professor McWilliams concluded by noting that the faults in the administration of bail were largely the direct result of surprisingly little guidance concerning correct procedures in arriving at a judicial decision concerning pretrial release.

In 1969, the Canadian Committee on Corrections in its report cited the need to change the bail system to ensure that money did not control release pending trial. The Committee advocated more effective representation of the indigent accused, not only at the trial itself, but also during the pre-trial and appeal stages. The main objective in reforming the bail system was to eliminate poverty as a significant factor in bail decisions (1969:99-100). The over-all philosophical approach was:

> It is desirable that every accused awaiting trial be released on bail unless the desirability of releasing the accused is out-weighed by the public interest. The detention of the accused while awaiting trial may unfairly damage a person who is subsequently acquited and may unnecessarily damage a person who is subsequently convicted (1969:101).

In light of the above statement, the Committee recognized the statistical evidence presented by Friedland (1965), supporting the conclusion that holding a defendant in custody pending trial mitigates against his chance of acquittal. Moreover, the Report recognized that the bail system is dis-

criminatory and operates to the detriment of the poor. Unfortunately, the Report failed to address the differentiation in bail disposition as evidenced in Friedland's study. Nevertheless, the Committee found that "there may be some cases where the deposit of a reasonable sum of money ... might be appropriate" (1969:115). This statement created grounds for abuse, as it was far too generalized. Standards applicable to one province may differ from those of another. Furthermore, judges of the same province may apply the term reasonable sum differently. What was important, however, was that the Report acknowledged the need to remedy the inequities in the system.

In another study on the efficacy of the administration of bail in a Canadian province, the John Howard Society of Saskatchewan in 1972, undertook a review of bail and remand practices in the Magistrates' Courts in the province. The Committee found that although the statutory provisions and legal principles with respect to bail were geared towards equity, there was in practice much injustice when these rules were applied.

Generally, the Committee found that accused with "adequate financial means or influence will not remain in custody longer than it takes him/her to phone his lawyer and get a justice of the peace out to court even if it is three o'-clock in the morning" (1979:25). Conversely, an accused without such assets as noted above will invariably remain in

custody until the next regular court session. Undoubtedly the present bail system is satisfactory for the financially self sufficient but unfair to the lower income bracket, and the latter, unfortunately, make up by far the greater proportion of those in difficulty with the law. To remedy this lapse in equal justice, the Committee recommended the need to establish certain recognized hours for hearings and these should be applicable to everyone "regardless of his station in life or whom he knows" (1972:26).

Robert G. Hann (1973), undertook the study of the criminal justice system by using the system analytical approach.[5] He applied this approach to the operation of the bail system in Canada. The study was conducted prior to the enactment of the bail reform legislation into law in early 1972. He examined, among other things, the effect of legal representation on the probability of obtaining bail. His findings revealed that having legal counsel did decrease the defendant's chances of obtaining bail. For example, the probability of being granted bail was 92.1 percent for those without legal counsel and only 85.1 percent for those with

[5] The system analytical approach is geared towards the understanding of how different components of a system function to produce the net activity of the system as a whole (Hann, 1973:23). In examining the court system, specifically on a particular pre-trial release decision, this approach takes into account the influence of an independent factor and controlling for the influence of other factors that are also simultaneously affecting the results of that same decision. To this degree, this approach attempts to understand the influence of a specific component in isolation from others. For a more detailed discussion on systems theory, see Hann (1973) and Turner (1982).

legal counsel (1973:306). Acknowledging the fact that judicial decisions were reached after considering many factors such as seriousness of the offense, number of charges and others, Professor Hann subjected the above findings to further statistical testing. Step-wise multiple regression approach was used to examine the effect of legal representation after other factors were controlled. This statistical test confirmed the initial finding regarding the inverse relationship between having legal representation and the probability of being granted bail. This result could be interpreted as suggesting that the accused's chances of getting bail would <u>increase</u> rather than <u>decrease</u> if he/she <u>did not</u> have legal representation. However, before such a finding can be established conclusively, Hann noted that the percentage of represented arrested cases without legal counsel at last appearance was lower as compared to cases with legal representation (1973:292-293). Therefore, an alternative explanation is that the results reflected "more the effect that being out of custody has on increasing the probability of having a lawyer rather than the effect having a lawyer has on increasing the probability of getting out of custody" (1973:309). Although the statistical testing was not exhaustive, the findings raised considerable doubt regarding the expected benefits of legal counsel for an accused in custody with respect to obtaining bail.

Wice's study regarding pre-trial release provided an insightful and convincing argument on the need for further changes in the system. In his book, Freedom for Sale, Professor Wice noted that the theory behind the statutory purpose of bail which assumed that the defendant will appear for trial rather than lose his money to the court has questionable validity. This is because those who have the money to afford bail are usually those most able to afford the financial loss of bail forfeiture (1974:5). Of importance to this thesis are Professor Wice's data indicating that even with the use of similar criteria in predetermining the amount of bail for each category of crime, there is still a lack of uniformity among judges in dispositional outcomes. When the basis for determining the amount of bail was reduced to only one criterion, that of seriousness of the offense, Wice's data again illustrated variations in the amount of bail set. The absence of uniformity in bail setting policy was interpreted as the result of each judge having his own conception of the relative seriousness of various offenses. Moreover, individual personal experiences among the judges shaped their perceptions of each case. Finally, many offenders were incarcerated because of their financial inability to post bail. In concluding, Professor Wice vehemently asserted that the bail system required more fundamental changes.

In 1979-1980, the Ontario Ministry of Corrections, in response to the rising number of remand prisoners waiting for trial, established eleven Bail Programs across Ontario (Morris, 1981). The main purpose of Bail Supervision for the Ontario Ministry of Correctional Services was to reduce unnecessary incarceration of persons waiting for trial.

The success of the Ontario programs was confirmed by Ruth Morris' evaluative study in 1984. In this study, an important and unexpected finding suggested an indication of racial bias in detention orders. She found that the courts in Toronto were as racist as their American counterparts.[6] She stated:

> [If] two defendants with identical bail status stand before the bar of the Toronto bail court, one white and one black, the black is significantly more likely to be detained in custody pending trial (1984:8).

To ascertain whether these findings are a reflection of the administrative practise of bail in Winnipeg, one must to turn to studies conducted in the city. A literature search revealed only one single report on pre-trial detention. This was conducted by the John Howard/Elizabeth Fry Society in 1982. The principal concern of this Report centered on the detention of individuals whose guilt "had not yet been established via trial process" (1982:1). There was no attempt at an empirical examination of the influences of ex-

[6] A more detailed review of racism in judicial decision-making in the United States will be dealt with in the methodological section of this paper.

tra-legal variables on pretrial release decisions. Notwithstanding the obvious weaknesses inherent in the administration of bail, as confirmed by Friedland (1965) and Wice (1974), differential bail dispositions have been one of the most neglected areas of both legal and criminological research in Manitoba. The paucity of an empirical investigation of bail disposition reflects the need for a credible attempt at evaluating and criticizing bail administration.

Chapter III

THEORETICAL FRAMEWORK

3.1 INTRODUCTION

For a number of years, two types of theories have dominated contemporary sociological orientation. They are structural-functionalism and the modern conflict theories. Both are umbrella terms which cover a wide variety of individual concepts. Both perspectives attempt to make sense out of the existing social reality. The role of law as a social phenomenon has long been studied from both of these on-going orientations. The study of the inequality of bail disposition can be understood from either perspective. The task of this chapter is to explore these two theoretical orientations in order to determine which has greater utility for the present research topic.

3.2 STRUCTURAL-FUNCTIONAL ANALYSIS

Structural functionalism is one of the major theoretical perspectives in sociology. It begins with the idea that society exists as a social system, and it consists of a number of different but interrelated parts. In addition, each part contributes to create an overall social order. Any contri-

bution to the stable operation of a system is called a function, or positive function. A functional requisite may be viewed as any function that must exist if a given system is to maintain itself in a specific setting. Consequently, the existence of any social system depends wholly on these functional requisites. Some examples of functional requisites are reproduction, socialization and settling of disputes in an orderly manner.

In sociology, the functional model was first applied extensively to the human social order by Talcott Parsons in the late 1930s. He developed an elaborate description of society as a vast, complex system with interrelated parts. The overall system and subsystems, argued Parsons, work together toward stability rather than toward disorder (Parsons, 1966). Parsonian functionalism is often considered conservative because of its emphasis on the existence of system-maintaining positive functions. In other words, it identifies positive functions and further assumes that society inherently moves toward equilibrium or balance (Kinloch, 1977:194).

Given this point of view, Parsonian functionalism faces the difficulty of explaining persistent disruptive behaviour such as crime and conditions of poverty in society. These problems were addressed by Robert Merton in his reformulation of the theory. His reformulation about social order allows for a broader, less conservative use of functionalism (Merton, 1966).

Merton recognized that not all human behaviours or ideas are positively functional. As a social system grows, innovations may create strains and tensions. These tensions may be disruptive to the social system. Merton defined such system-disruption as dysfunction (Merton, 1966:818). It may well be noted that dysfunction does not limit itself only to "consequences which lessen the adaptation or adjustment of the system" (1966:818). It also asks the crucial question; functional and dysfunctional for whom? Functionalists have argued, for example that equality before the law is functional as it helps to ensure impartiality in court. From this view laws transcend all social and physical boundaries. In practise, a rich man and a poor man do not appear before the court on equal terms. The former is far more able to hire the best attorney in town. The latter, however, has to resort to an already overtaxed legal aid system or go without legal representation. This elaboration of dysfunction is important, as the concept is central to Merton's argument that does away with the intrinsically conservative penchant of functionalism.

Merton's emphasis on the reality of dysfunction, as noted above, makes him aware of the darker side of law in a way not generally associated with functionalism. Moreover, in contrast to Parsons, Merton's approach no longer views conflict as coming exclusively from outside the social system. To this extent, Mertonian analysis approaches a variety of

conflict theories. The distinction here, claim Wallace and Wolf, is that Mertonian functionalism refers to functional and dysfunctional practices of institutions for people, "whereas, conflict theorists generally refer to people's interests and the degree to which these are served" (Wallace and Wolf, 1980:61). In keeping with functionalism, Mertonian functionalism sees social behaviour as a balance of contending forces which constitutes a normal facet of the social order.

Extending from this viewpoint of a balance of contending forces it is equally tenable that certain values and norms exist because they operate toward greater social integration. It follows then, that consensus of values exists when the majority of the population is in approximate agreement regarding their beliefs. Berghe cogently states that "not only is the value system (or ethos) the deepest and most important source of integration, but it is also the stablest element of the socio-cultural system" (1963:696).

Similarly, this value-consensus model considerably influences the functionalists' study of the role of law in society. It has been suggested that:

> (T)he state of criminal law continues to be ---as it should--- a decisive reflection of the social consciousness of a society. What kind of conduct an organized community considers, at a given time, sufficiently condemnable to impose official sanctions, impairing the life, liberty, or property of the offenders, is a barometer of the moral and social thinking of a community (Reason and Rich, 1978:40).

From the perception of law as representing the codification of major social values of a society follows the accompanying view that law transcends diverse interests. In the performance of its integrative function, the legal system is commonly seen as a neutral arbiter in the settling of disputes (Schur, 1968; Chambliss and Seidman, 1976). According to Talcott Parsons, law can be viewed as a set of mechanisms "by which rights and wrongs can be decided without recourse to violence, and by which parties deemed in the wrong can be constrained from acting upon interpretations, interests or sentiments at the expense of others" (1966:140).

In view of the above observation regarding the value-consensus model in relation to bail study, the net aggregate consequences of bail dispositions would be deemed as functional. It is functional since the bail system holds on to those who are considered dangerous to society and releases those who are not. The implication here for the perpetuation of the bail system is important. Bail is viewed as a stabilizing mechanism, as it perpetuates the "net balance of functional consequences" for society as a unit, as well as for subgroups (Wallace and Wolf, 1980:62). It is believed that functionalism contributes significantly to our understanding of social arrangements in society. Turner, for instance, emphasizes that "without functionalism, sociology would not as readily have developed a number of important assumptions which can guide the development of theory"

(1982:113). The functionalist tradition, however, is not without limitations.

In recent years, criticisms of functionalism tend to be directed toward its use of the equilibrium model approach. The legal system was assumed to be in a constant state of moving equilibrium. Such an approach is over-simplified, since it would involve the postulation of impartiality in the legal system. Value-neutrality of the law and its institutional practices is assumed by the consensus model. This implies that the machinery of law stands above society, weighing in its scales the conflicting interests of members of society. Recent analyses of the legal system have revealed that the popular image of the value-neutrality of law in action is in fact incorrect (Wice, 1974; Hunt, 1978; King, 1981). Alvin Gouldner, in his critique of the consensus model of law, vividly points out that this view "....persistently sees the partly filled glass of water as half-full rather than half empty" (1970:290).

As previously noted, law as a normative system is interpreted as reflective of the society as a whole. It is independent of any ideological implications; Parsons says that functional analysis has nothing to do with political conservatism or a defense of the status quo (Parsons, 1966). This is a limited conception of law. To the contrary, many sociologists view the legal system as ideological, formulated by, and existing for, the elite members of society (Quin-

ney, 1974:192-194; Chambliss, 1976:168-169; Vold, 1979; Ritzer, 1983). Horowitz enunciates this position quite explicitly: "Consensus theory.....tends to become a metaphysical representation of the dominant ideological matrix" (1962/67:270).

To summarize then, functionalists emphasize universal values over individual interests. It takes a macroscopic view of the law and its role in maintaining stability in society. It follows then, argue functionalists, that the consensus model is the closest reflection of the working of the legal system. This wholistic view of society is generally acceptable as it captures reality from a different angle, claims Dahrendorf (1958). Dahrendorf draws the analogy of the situation of a sociologist to that of a physicist with respect to the theory of light.

> Just as the physicist can solve certain problems only by assuming the wave character of light and others, on the contrary, only by assuming a corpuscular or quantum theory, so there are problems of sociology which can be adequately attacked only with an integration theory and others which require a conflict theory for a meaningful analysis (Dahrendorf, 1958:176).

In summation, the foregoing discussion on functionalism is based on the assumption that while societies do indeed show a tendency toward stability, equilibrium and consensus, dissension and conflict are opposite faces of the same coin. This writer suggests that a more plausible approach to the factors governing bail disposition can be examined from a different orientation, one that captures the dynamic process

of social interaction from an alternative viewpoint. It is towards this alternative viewpoint that the next section will examine.

3.3 CONFLICT THEORY

The idea that society is based on conflict goes back many years. In the seventeenth century, Francis Bacon wrote that "the laws are like cobwebs, where the small flies are caught and the great break through." Nicolo Machiavelli cast the same idea into a different metaphor when he wrote that "(he) who steals a handkerchief goes to jail, who steals a country becomes a duke" (Inveranity, et al., 1983:9). In mid-nineteenth century, Karl Marx argued that social conflict between different social classes is the result of the competitive nature of the capitalistic mode of production (Tucker, 1978). Conflict arises essentially between the haves and have-nots. The former possesses greater power, while the latter lacks power and prestige. The haves exercised their power to maintain their positions and the existing status quo. Laws are passed by the state, and laws are administered favourably for the bourgeoisie.

Thorsten Sellin (1938) in Culture, Conflict and Crime presented a view of conflict in society based on different cultural groups. He argued that the nature and enactment of criminal laws - which prohibited certain forms of behaviour and specified types of sanction for violation - in complex

pluralistic society were ultimately manifestation of norms and values of the dominant cultural group. The conduct norm, which he defined as "rule which prohibits, and conversely enjoins, a specific type of person, as defined by his status in the normative group, from acting in a specified way in certain circumstance," of other cultural groups that were enacted into law may pose as a source of conflict in society (1938:32). Law, in both views, does not represent consensus of values, rather it reflects the conduct norms of the dominant culture in society.

The conflict model of society, like many other theories, emerged largely in response to the failure of previous paradigms to explain some aspects of social reality. Kuhn (1962) suggested that in the practice of normal science, certain anomalies arise; observations or paradoxes which cannot be resolved within an existing paradigm (a paradigm is a set of concepts, categories, relationship, and methods which are generally accepted throughout a community at a given point in time). These anomalies become the focus of increasing attention, and attempts are made to solve them. The conflict paradigm represents an alternative explanation for the political and social unrest that occurred during the 1950s and 1960s.

The conflict model of society, similar to the functional model, is generally oriented toward the study of social structures and institutions. However, the conflict position

is a series of contentions that are often the direct opposites of the functionalist/consensus position. This is best exemplified in the works of Dahrendorf in which the basic tenets of conflict and functional theories are juxtaposed (1959).

It is noteworthy to point out, that conflict theory, as many have been led to believe, is not a universal unified perspective. It can broadly be divided into two distinctive traditions: critical and analytical schools of thought (Martindale, 1960:176; Wallace and Wolf, 1980:77; Bohn, 1982:567; Bernard, 1983:201).[7] Modern Marxist theorists, Frankfurt School theorists and C. Wright Mills, among others, are conversant with the critical orientation. The ruling class determinist (instrumentalist) and elitist theories are different strains of the critical tradition. On the other hand, the analytical theorists, predominantly influenced by Max Weber, subscribed to a more structural approach in their views of the conflictual nature of contemporary societies. In view of these two differing conflict paradigms

[7] Martindale (1960) equates critical school to "conflict ideologies" and analytical school to "sociological conflict theories". He argued that conflict ideologies were "sets of ideas vindicating particular social positions and spurring particular action programs", while sociological conflict theory "though some of its propositions coincide with those appearing in the (conflict) ideologies, is scientific, resting its hypotheses on the scientific standards of the discipline" (p. 176). Similarly, in his discussion on the consensus-conflict debate, Bernard (1983) commented that "sociological conflict theories represent a string and vibrant branch of modern sociology and have long been recognized as separate and distinct from radical (or critical) theories" (p. 201).

the following sections will be devoted to the explication of both orientations.

In the main, the critical orientation views society as highly segmented or stratified along a single dimension; with a ruling class opposing the masses. According to the critical conflict paradigm, the state and its appendages are seen as "handmaidens of the ruling class (Chambliss and Seidman (1982:306). Applied to law and the legal order, this view is predicated on the assumption that the criminal justice system is an instrument or tool, which can be manipulated, almost at will, by the ruling class to further its own interests and to the detriment of all others (Bohn, 1982:571). In instrumentalist terms, law creation is viewed, first and foremost, a reflection of the interests of the ruling class. Since the ruling class controls the legal apparatuses, the tone of laws and the nature of the legal sanctions for violations, conceivably indicate a close relationship among members of this class in the degree of agreement over what their interests demand. Instrumentalist theory, thus, views the capitalist class as a homogeneous unified group devoid of any internal dissensions and antagonisms (Beirne, 1979:379; Chambliss and Seidman 1982:307).

Apart from a rather dichotomous view of social conflict, instrumentalist theory is also highly highly suspicious of positivism. Generally, positivistic thought holds the view that social reality can be understood through a careful ex-

amination of empirical facts. Furthermore, it is argued that it is possible to refute and refine existing theories through a critical examination of empirical facts. Value-neutrality and objectivity can be insure by a systematic testing by the standards of science. Critical theorists, however, view scientific knowledge as not neutral, objective or passive (Turner, 1982:418). The critical school argues that by simply recording what exists in the empirical world and then by seeking to understand the essence of it, social science merely supports the status quo. It follows then, argue critical theorists, that value-neutrality of the social science is but another component of the current pattern of constraint and oppression.

The upshot of this ambivalent attitude towards social science is a body of thought that rejects the standards of science as appropriate for evaluation of social reality (Turner, 1982:420). Furthermore, on the basis of the preceding critique of the existing social arrangements, this theory staunchly advocates for the construction of an alternative social order. A new social arrangement that would liberate people and allow them to realize their full potential. This is a clear reminiscence of Marx's thought.

There are, however, several major problems with this strain of conflict theory. Notably instrumentalist accounts have been criticized for presenting a false image of 'ruling class' unity and for failing to adequately explain the for-

mation of state policy that is not in the objective interests of the capitalist class (Beirne, 1979). Capitalists' interests do not always mesh in a harmonious manner as purported by the instrumentalist position. Chambliss and Seidman (1982) convincingly demonstrated that intra-ruling-class conflicts are very real. Instrumentalist cannot account, for example, for the existence of certain laws that are not in the immediate interests of the ruling class, and are favourable to the working class (for example, rent control and anti-combines legislations, and the right to strike legislation). Viewing the legal order as pliant tool of the ruling class not only fails to conform to social reality, it is also vulnerable to simple empirical refutation.

It invokes its own utopian moral standard of creating a better world, while rejecting the standards of science. The consequence of this ideological stance makes this approach untenable for those attempting to adopt it within the positivistic tradition of sociological theory (Turner, 1982:420). Moreover, informed by Marx's writings, critical theory has also been implicated for its penchant towards instrumentalism and failing to transcend a pluralist framework. Consequently, Beirne argues that, in the legal system, this position ignores the partial autonomy of law (1979:379).

In contrast, proponents of the second tradition - Ralf Dahrendorf, Lewis Coser and Randall Collins - are at vari-

ance in their views from the critical tradition. The analytical theorists (or dialectical theorists) subscribe to the belief that social relationships are far more complex in the way power and status are distributed as purported by proponents of the critical tradition. Interlocking patterns of stratification do not line up neatly with the rich opposing the masses. This is believed to be true because of the existence of a number of different sources of power and position in society. Not one institution, such as that based on economic affluence or property, is always paramount (Wallace and Wolf, 1980:120). Thus, while specific capitalists and members of the class factions may attempt to manipulate state policies, the success of such attempts is by no means guaranteed. Indeed, the state ability to transcend the interests of particular class, according to structuralist theory, "guarantees that the state within the limits imposed by inherent contradictions and the class struggle, will operate in the long-term interests of the capitalist class, independent of the direct participation of individual capitalists" (Chambliss and Seidman, 1982:308).

Structural analysis begins with the observation that it is crucial to examine social structures and linking these structural patterns to members of the social system in order to observe how resources strongly constrain behaviour and attitudes. Structuralists, thus, sought to interpret the system, sub-systems and elements as being mutually interde-

pendent and in constant mutual interaction. It further assumes that causation is multiple and reciprocal (Berkowitz, 1982; Brickey and Comack, 1986).

Informed by these theoretical insights, structuralists argue that in a capitalist system, the state operates as a mediator between two conflicting classes; capital and labour. In order for the state to carry out its mediating role successfully in promoting social harmony (legitimacy) which is necessary for capital accumulation, it requires a certain degree of autonomy. Relative autonomy not from the structural constraints and contradictions inherent in capital-labour relation but from the direct manipulation of the capitalist class. In this view, capitalists or the dominant class do not directly control the state and the legal order.

Structuralist' postulations make us aware that this relative autonomy of the state in a capitalist economy can therefore account for the existence of legislations which favours workers (noted earlier) and imposes limitations to capitalists' activities. Thus, this relative autonomy of the state enables it to transcend certain capitalists' interests in order to ensure that the long-term interests of the capitalist class are protected and perpetuated. In the final analysis, conflict is not essentially seen as inimical to social life as it can also be productive.

Although the two conflict traditions differ in their views of the social order, they share several points. Both traditions are interested in the understanding of the role of power as the core of social structure and social relationships.[8] Power is conceived as not only scarce and unequally divided, but also as essentially coercive. The primacy of power is central in the understanding of conflict in society.

In addition to the interests of the two branches of conflict theory in the role of power, both are certainly critical of positivism. However, as Turner argued, the structuralist school (analytical conflict theory) "appears ready to use the tool of science to expose the laws governing the flow of events in a particular social system" relative to the instrumentalist position (1982:421). Finally, the utopian elements clearly explicit in the instrumentalist orientation are subordinated in the structuralist school in the understanding of the existing social conditions.

---

[8] The concept of power has been a continuous source of debate between political scientists and sociologists. To avoid being enmeshed into this on-going scholastic discourse, this author adopts Dahrendorf's definition of power as the "probability that one actor within a social relationship will be in a position to carry out his own will despite resistance regardless of the basis on which this probability rests" (Dahrendorf, 1958:166). In addition, in any relationship, power is rarely symmetrical over one another. In this context, conflict theorists necessarily view power as not only scarce, but also essentially coercive. The essence of power enables those who possesses it to control the powerless, thus, power has become the source of conflict.

For the purpose of this study, Dahrendorf's conflict theory was examined and Chambliss and Seidman's (1982) theory of law was adopted as the most useful for the study of the bail system.

In 1958, one of the major conflict theorists, Ralf Dahrendorf, belonging to the analytical tradition, was persistent in his criticism of functionalism. He claimed that the consensus interpretation of society is unrealistic and utopian and he suggested that sociologists turn to the conflict model. Society has two faces, claimed Dahrendorf, one of consensus, the other of conflict. He offered the following suggestion:

> Concentrate in the future not only on concrete problems but on such problems as involve explanations in terms of constraint, conflict, and change. This second face of society may aesthetically be rather less pleasing than the social system ... but, if all sociology had to offer were an easy escape to utopian tranquility, it would hardly be worth our efforts (Dahrendorf, 1958:127).

The model that emerged out of this theoretical calling is a dialectical-conflict perspective --- a dialectical-conflict scheme which Dahrendorf felt would provide a theoretical set of guidelines towards providing solutions to question such as: Under what conditions are various patterns of organization likely to be created, maintained and changed?

Dahrendorf claims that systematic social conflict in society invariably is the result of differential distribution

of authority and power over others (1959:165).[9] In his analysis of social arrangements, he is interested not only in the structure of various positions in society, but also in the phenomenon of conflict within them. Central to his thesis is the idea of authority in society.[10] Society is composed of a number of units which he calls "imperatively coordinated associations" (hereafter referred to as ICAs, in Dahrendorf, 1959:171). Each unit comprises an amalgam of two and only two aggregates of position---positions of domination and positions of subjection. Authority resides in the positions and not on the persons. Thus, a person in authority in one setting does not necessarily hold a position of authority in another setting.

Dahrendorf further argues that an inherent tendency to conflict in society is the struggle for authority. In any designated ICAs, there are essentially two subgroups. In each subgroup, there exists two basic types of roles: ruling and ruled. The ruling clusters of roles consists of

---

[9] Dahrendorf uses the concept of conflict for "contests, competitions, disputes, and tensions as well as for manifest clashes between social forces" (1959:135). This is consistent with his dialectical assumptions, which points to any ICAs, where 'conflict of interests' among quasi-groups will become true conflict groups and willing to engage in overt action against each other.

[10] Authority is viewed as a sort of power that accompanied a social role or position. It is also legitimate in the sense of being defined and delimited by social norms and it is backed up by sanctions. Therefore, one is able to attain a position of authority by achievement or ascription. The Prime Minister is an exemplar of achieved status, whilst the Queen is of ascribed status.

those in position of authority, and the ruled cluster of roles consists of those in position of subordination. Those in positions of authority and those in positions of subordination in any designated ICAs hold certain interests that are "contradictory in substance and direction". These conflicting interests will generate conflict between two subgroups within a designated ICA; that is, those who have authority and those who have none. In a radical departure from the conventional 'economic' usage of class, and class conflict, Dahrendorf designates these conflicting classes as conflicting groups. He writes, "(in) terms of our model, the term 'class' signifies conflict groups that are generated by the differential distribution of authority in imperatively coordinated associations" (1959:204). In other words, the term class refers to any conflict group in which orders are given by those who have authority and taken by those who have none.

Dahrendorf's theory thus implies (as noted earlier), that authority is dichotomous. Conflict is inevitable in society. This is true, because those in the dominant positions, that is, those with authority, will seek to maintain the status quo, while those, in subordinate positions will seek change. In other words, the latter is in constant pursuit of power and the former in defense of it. Each group in an ICA, now aware of its own objective interests, will engage in a contest of authority. The resolution of this contest

or conflict involves the redistribution of authority in the ICAs. The redistribution of authority also represents the institutionalization of new patterns of ruling and ruled roles within the ICAs. Thus, conflict is a source of change. Social reality is a continuous unending cycle of conflict over authority within the various types of ICAs. Once again, Dahrendorf underscores the importance of power and dialectic as the central concepts in the study of conflict arising from the institutionalized authority relationships in ICAs. These concepts of power and dialectic are equally important in the study of the legal order.

Criticisms of Dahrendorf's theory of social conflict are many (see Wallace and Wolf, 1980; Bernard, 1983; Hagan, 1985). One of the major caveats of Dahrendorf's exposition is its limitation of explaining all forms of conflict situation. Adopting the position that all social relationships are attached to interests and role expectations, which inevitably lead to role conflict - as each role has conflicting expectations attached to it - assumes that each role involves power and the expectation that power be exercised for the benefits of the organization as a whole and in the interests of maintaining the status quo. Consequently, the state apparatus is expected to pursue policies which are at variance with the interests of the lower class or powerless. The range of conflict that may occur in the real world is at variance with this view. For instance, welfare legislations

which support unemployed and non-productive labours or even rent control, which inhibits landlords' ability to receive open-market rental income, none of which could be shown to be in the immediate interests or wishes of the capitalist class, and thus cannot be explained under the purview of Dahrendorf's theory. These problems, however, were addressed by Chambliss and Seidman in their treatment of the legal order.[11]

Chambliss and Seidman (1982), in their theory of law, begin their work by criticizing the pluralist and ruling class perspectives on law creation. They found both theories equally untenable as explanations for the working of the legal order. Instead, they advance a model which purports to recognize both the strengths and limitations of ruling class influence, and the role of power on the legal order. As they put it:

> The history of poverty, contract, and corporation laws ... reflect the power of merchant, capitalist, and corporate elites in various epochs. They (laws) reflect this power, however, in the face of opposition from other social classes and groups struggling against them (1982:114).

---

[11] Robert Seidman commented that Dahrendorf's adoption of dialectic into conflict theory provided a much needed and served as an important springboard for further theoretical development in the conflict school. However, it has limited theoretical and practical applicability. This weakness among others were remedied by a more comprehensive and inclusive application of the dialectical methodology to social reality (Interview: Dept. of Sociology, U. Of M. 1986). In view of the contribution of Dahrendorf, it was felt that his work requires more than a passing acknowledgement in this study.

To put it differently, laws evolve as a result of the response by the people to problems in the face of contradictions in the political, economic and social relations of the period.[12] In brief, law creation is dialectical.

The logic of dialectic dictates that progress (in this case, law creation and implementation) comes about as a result of struggle and conflicts. Inherent in every society, nation and economic system and in any historic period, contradictory elements have been the moving force behind the creation of law (1982:144). It is these contradictory elements that bring about social changes, including the creation of law. Explicit also in the logic of the dialectic, is that, "people make laws, people acting in the face of extant resources and constraints", and not the system or the legal order (1982:144).

This dialectical model of law, advanced by Chambliss and Seidman, is consistent with Dahrendorf's conflict theory, insofar as it assumes the centrality of authority and the role of power. It depicts a deeply authoritarian legal order, where there exists a sharp dichotomization between 'we' and 'they'. The legal order is characterized by lawmakers promulgating law, enforcers implementing it and the public responding to it (1982:80). In brief, the legal order re-

---

[12] Contradiction is viewed as a set of relations that contain elements that cannot coexist and by which by their incompatible nature undermine basic features of the society.

flects conflict, power and interests between two groups of people; those with authority and those without. This is as far as Dahrendorf's conflict theory on authority relationship will take us and where similarity with Chambliss and Seidman ends. Chambliss and Seidman offer a more penetrating and sophisticated explanation to the reflexive relationship between social structure and human action, from which flows the production of law. Criminal laws must be studied in the social context in which they emerge. Law creation is dialectical.

In this dialectical model, criminal law and tort law fundamentally portray the roles of conflict, power and interests. Criminal laws are the result of those politically and economically powerful, exerting their influences on the normative strictures and organizational operations of the legal system. "People, social classes, and groups with sufficient organization, money and interests", declare Chambliss and Seidman, "affect legislation not only by getting laws enacted that favour their interests and views, but also by preventing the enactment of laws that will interfere with them" (1982:193). Consider for example, the passing of the Opium and Narcotic Drug Act of 1920. This legislation made it possible to be criminally charged for drug addiction, especially with regard to opium. In the early 1900, the Chinese were held responsible for widespread opiate addiction among the White population. Consequently, the Chinese were sin-

gled out as a target for widespread punitive police enforcement practices. Arguing from a structural Marxist perspective, Comack pointed out that the contributing factor which brought about the drug legislation and widespread punitive police enforcement practices against the Chinese was the serious political crisis of legitimacy confronted by the state. In British Columbia, the working class was not united in its conflict with capital. On the one hand, the more conservative craft union members perceived their main threat to be the pressure of the Chinese labour. On the other hand, the socialist unions were more intent on defining issues in class, rather than racial terms (Brickey and Comack, 1986:84). Comack argued that in resolving this dilemma and re-establishing a working class consent in order for capital accumulation to proceed, the state "endeavoured to further a 'moral' and 'racial' perspective regarding the source of economic and social problem" (1986:82). By identifying the Chinese as a major source of the problems confronting the society, the state helped to redefine the situation "couched in racial terms." The drug law de-legitimize further the competing view of the Socialist movement, which defined labour issues along class rather than racial terms, while offering a "symbolic concession" to the more conservative unions who were willing to co-operate with capital (1986:86). It follows from this exemplification, that the substantive content of the legislation which became law, was expressed in terms of those who are politically and economically weak

and also in terms of the historical and social expediency in which the law emerged.

Power and inequality are inherent and central features of the legal order. The ability of any group to enforce the passing of particular legislation is determined largely by its ability to marshall sufficient resources toward the attainment of its desired goals. Chambliss and Seidman, argue that acts are criminal because it is in the interests of the dominating class or group to define them as criminal. "Laws reflect the interests of those in power at the expense (both financial and psychological) of those who lack the economic and therefore the political power to influence the legislative process" (1982:196). In this vein, it has been further argued that there is a tendency for the more powerful groups within society to utilize criminal sanctions as a tool for maintaining the subordinate status of the powerless group. An illustration closer to home is the punitive societal reaction to public drunkeness among Canadian Indians. As Hagan (1977a) argues:

> Indians more frequently than whites drink and recover in public. There are differences in access to, and preferences for, privacy in drinking. Given the resulting group-linked differences in behaviour, equal treatment of those who violate public drinking norms cannot produce an equality of legal outcomes. Indians and the subordinate groups, will continue to populate, disproportionately, our prisons until surrogate institutions of privacy (example, overnight detoxication centres) are developed as alternatives to incarceration (p.609).

The failure of the criminal laws to protect the powerless members of society reflects the seriousness of the problems of inequality and power relations in the legal system. Notwithstanding the problems of inequality in power, the dialectic model further argues that power is potentially available to the subordinate or powerless members of society if they become sufficiently organized to wrestle control or to challenge the hegemony of the powerful groups. Consequently, the dominant groups' hegemony on the legal system is not absolute nor is it immutable.

To lend substance to the foregoing exposition, it will be helpful to consider a concrete example, of the relationship between women and the law. The explicit and implicit discrimination against women in the legal system has been described in terms of a "double standard of morality and power" (Smart, 1976). Laws relating to such areas as rape, prostitution, and paid employment have long been drafted to perpetuate the dependency of women in society (Smart, 1976). Furthermore, the enforcement practices again reflect biases towards women. A case in point is the enforcement of laws relating to rape. Roberts (1983), for example, pointed out that:

> In Canada, 1968-1971, the chances of being convicted of rape, if the victim reported it to the police, were between 1 and 2 out of 25. In 1972, the conviction rate for reported rape was 5% given a 90% unreported proportion, the true rate of conviction for committed rapes is perhaps 1/2 of a percent. Rape is easy to get away with (1983:9).

The laws have changed in several areas (example, family and rape laws) as a result of the intense struggle by women to change them. Women's struggle for equality in law has brought changes but not equality (Chambliss and Seidman, 1982:147). It is indubitable, that lacking economic, political and social resources, in an adversarial system of justice which pits lawyers against lawyers in a struggle for favourable outcome, women are in an unequal and disadvantaged position. Nevertheless, the dialectical model provides a viable explanation portraying how the weak struggle to change existing laws.

3.3.1 General Propositions of Conflict Theory

The analytical conflict theory discussed earlier gives rise to the following general formal propositions;

1. The base of capitalist political economy is the market economy and the property relationship thereof. The ruling class' capacity to control the economy depends on its control over the means of production. In the legal realm, the manifestation of the first defense of the capitalist political economy is in contract and property laws. Criminal laws' central concern lies in property. To the extent that the law reveals itself no place more forcefully than with respect to property, one of the most desirable attributes of those who appear in the criminal court,

would be those possessing or seeming to possession to some forms of property.

2. Just as the state must maintain neutrality in its mediating role between capital and labour in the capitalist political economy, judicial institutions existing within the state structure also need to maintain neutrality in order to win the acceptance of the two conflicting classes in society. While formal equality must be maintained in the legal sphere, structured inequality prevails in the economic and political spheres. Therefore, when sanctions are imposed, the most severe sanctions would probably be imposed upon those members belonging to the lower economic class.

3. The more power an individual possesses, the greater is his ability to influence court decisions. Thus, a simplistic application of conflict perspective would predict that less powerful members of society will be more likely to receive unfavourable treatment. However, power is situational, and in the context of the criminal court the relative powerlessness of certain members of society may be more advantages than disadvantages. This is true because the relative powerlessness of women, by virtue of their weaker ties to the economic means of production, is not accompanied by a dimunition in value and rank. Personnel in the judicial system hold certain values that are shaped

by the achieved and ascribed status of the defendants. Judicial paternalism which involves a power relationship implies the need to protect and respect females. To the extent that society holds the view of women deserving respect and protection, therefore female offenders are likely to receive more favourable decision outcomes than male offenders.

4. In a capitalist economy, the state performs two important functions: accumulation and legitimation. Its efforts to maintain and enhance capital accumulation must lead to protest by the working class whom the efforts do not benefit. In meeting this challenge, the state will introduce measures to solve the problem. Legislation that becomes law is generally influenced by those who are politically and economically powerful. Thus where laws are stated that people of all classes are equally likely to violate them, offenders who are members of groups that are politically and economically weak, or who belong to non-white racial groups, may receive less favourable legal sanctions for violations than whites or those who are more favourably situated.

3.4 CONCLUSION

The conflict theory, like its predecessor, did not emerge unscalded from criticisms (Wallace, et al., 1980; Dahrendorf, 1982; Ritzer, 1983; Bernard, 1983). Despite the numerous criticisms directed at conflict theory, it should be apparent that the consensus and conflict perspectives provide alternative images of how the criminal justice system actually functions. In examining the day-to-day functioning of the bail system, this writer recognized the applicability of both theories to the interpretation of the system, although, they emphasize different aspects. Dahrendorf astutely summarized the two perspectives:

> While the integration theory likens a society to an ellipse, a rounded entity which encloses all of its elements, conflict theory sees society as a hyperbola, which, it is true, has the same foci, but is open in many directions and appears as a tension field of the determining forces (Eva Etzione-Halevy, et al., 1973:107).

The conflict perspective in law presupposes the existence of inequality --- inequality not merely in terms of economic or class, but ethnicity and sex as well. In the study of bail disposition, social inequality and power occupy central roles. It should be established by now that power is the key to the understanding of inequality in the legal order from the conflict orientation. Power does not reside entirely within one group while totally absent from all other groups. Society is not clearly dichotomized into a ruling

elite and a powerless mass (Turk, 1971:33).[13] In fact, the concept of a ruling class does not appear in any of the major conflict theorists such as Sellin, Vold, Turk and the early works of Quinney. Society, claims Turk, is "neither a perfect cooperative of all for one and one for all ... nor a Darwinian jungle" (1971:32).

It is further argued that the ability of any group to translate its values and interests into law depends not only on the degree of political, economic and social powers which these groups possess, but also how the passage of legislation is influenced by the constraints and contradictions inherent in the capitalist political economy. Although sources of power are held by the dominant class it does not have hegemony over it, for it is also potentially available to subordinate classes. In the context of the capitalist economy, the state operates as a mediator - with relative autonomy from the capitalist class - between essentially two conflicting classes, capital and labour. In its mediating role, the state brings about capital accumulation and simul-

[13] Austin Turk's works are not free from criticism. Nevertheless, it should be pointed at the outset, that Turk is a recognized leading figure in his discipline. Consistent with many conflict theorists, such as Quinney, Turk concentrated solely on the formation and enforcement of law. Consequently, neglecting the issue of the "causation of criminal behaviour" (Akers, 1979:530). In addition, in the area of socio-legal literature, Turk tends to dismiss as irrelevant the body of research findings, revealing the existence of a considerable consensus in society, across race, sex and age, on the desirability and seriousness of certain acts (1971:32). The existence of such widespread consensus runs counter to Turk's conflict position.

taneously enhancing legitimacy, which ultimately ensured the long-term interests of the capitalist class. The differential enforcement of law is taken to reflect the differential distribution of power in society. This is not to suggest that only powerless people are criminalized. But in general, it is argued that the more power a group has, the less likely it will feel the full weight of the harshness of the law. The enforcement of law must be seen in terms of the historical process and the existing social and political conditions in which laws emerged (see drug law for clearer illustration). Consequently, factors outside the legal boundaries can be conceived to influence bail decisions. Laws are legislated and enacted in our society with the principal intention of deterring certain acts in order to ensure social harmony for capital accumulation to take place, which leads to the survival of the capitalist political economy. Since, certain laws may not be favourable to certain members in society, especially the working class, inequality in the administration of justice may emerge. Extra-legal factors such as the defendant's economic status and social status may influence the equitable administration of justice. In view of the foregoing literature review and theoretical discussion, this writer has adopted the position that the conflict approach on law offers a more powerful explanatory scheme than those presently available for this research.

Chapter IV

METHODOLOGY

4.1 INTRODUCTION

The purpose of the bail law, as previously noted, is to insure the presence of accused persons for trials by devices which will guarantee maximum safety to society and at the same time impose a minimum restraint upon the accused. For present purposes, the important question was whether a defendant's social characteristics, that is the extra-legal variables, affected the type of release condition offered or the amount of dollars required for release. The extra-legal variables chosen for this study are race (white and non-white), socioeconomic status (hereafter SES), sex, age and residential status of the offender, dichotomized as permanent place of residence and no fixed address. The dependent variables are types of release (undertaking to surety) and the actual dollar amount of bail. The legal variables are prior criminal records, seriousness of the offences and the number of charges.

The methodology for this research practice was designed to suit the research problem at hand and does not model or completely follow previous or current designs. Inasmuch as

this investigation may suggest the need for a further bail reform, the primary thrust was to explore and try to account for the variation in bail dispositions.

4.2 SOURCE OF DATA

The data for this study were obtained from Police Court Files of offenders appearing for bail hearings in the month of April, 1986, in the Provincial Judges Docket Court at the Public Safety Building. The sampling frame for this study included both indictable and summary offenses from the 1st of April to the end of April 1986.[14] The reason for choosing this time frame was determined largely by the availability of the data source. Preliminary court monitoring at the Provincial Judges Docket Court at the Public Safety Building (which is normally the court of first appearance) from November 1984 to January 1985 led the author to believe that the number of cases was higher than for the same time during the previous year. A report submitted by a court monitoring group for the John Howard Society further confirmed the increase in case volume as compared to previous years. Thus,

---

[14] The criminal code divides offenses into two categories: (1) indictable offenses and (2) offenses punishable upon summary conviction. Generally, indictable offenses are considered more serious under the Criminal code. It includes rape, murder, armed robbery with maximum penalties ranging from two years to life imprisonment. Conversely, summary offenses comprise of less serious crimes. They include offenses such as common assault, disturbing the peace, with a maximum penalties not exceeding 6 months incarceration or $500 fine. Clarke, et al., (1977) provides a detail account of both offenses.

it was not surprising that 435 bail hearing cases were collected for this study during the month of April.

The unit of analysis was the arrested defendant who had been charged with either summary conviction offences or indictable offenses. Defendants whose cases were finally disposed of at first court presentation were excluded because no pretrial release decisions were made for them.[15] Cases not admitted to bail because defendants were remanded to custody were also excluded.[16] Cases where pretrial detention was mandatory, such as those involving 1st and 2nd degree murder, high treason and sabotage were also excluded. Finally, in the event of multiple defendants, each individual was taken as a separate case.

---

[15] It is noteworthy to point out that this study does not concern itself with defendants in the initial stage of criminal processing, that is, at the point of arrest by an officer of the law. Nevertheless, an explanation of an important development in the Reform act is warranted. Under the 1972 Bail Reform Act, appearance notice (s. 448 forms 8.1) was introduced as a social equalizer. An appearance notice is normally issued by a police officer commanding the accused's attendance at court at a particular time and place. This is only issued when the police officer is unable to show justifiable cause for arresting the accused. If, on the other hand, an appearance notice is not given at the time of an alleged offense, a justice of the peace, after deciding that the evidence is sufficient, will issue a summon, which orders the accused to appear in court.

[16] This exclusion is justified on the basis that only 5 percent of the defendants were denied bail. Since the bail denial cases were so few, it would not influence the overall analysis.

The sample chosen for this study did not represent the total population of bail hearing appearances in both Court A and B in this one month in the Provincial Judges Docket Court in Winnipeg. However, virtually all except for a few arraignment hearings from these two courts were unavailable. Moreover, cases heard in Courtrooms C and D were unavailable. In view of the above, availability sampling was used based on the fact that the probability of selection of each unit of data was not known. As a result, subjects were selected as they become available within the stipulated time frame. This sampling procedure can be informative, especially when little is known of the population under investigation. It does, however, limit generalization that can be drawn from the findings.

4.3 FACTORS CONSIDERED BY THE STUDY

Introduction

Conflict theorists have typically regarded the administration of justice as a process of differential criminalization, guided by group interests, and prejudically based on personal extra-legal attributes (noted earlier). This is not an unfounded position.

Previous research bearing on the influence of extra-legal factors in dispositions has provided support for the conflict position. Studies based on both capital and non-capital cases in the United States have found sentencing differ-

entiation for social variables, and suggest the presence of differential treatment (Partington, 1965; Nagel, 1969; Wolfgang and Riedel, 1973). Consequently, if judicial decisions are made according to a host of extra-legal factors, including race, social class and sex, then the mechanism of criminal dispositions is consistent with the conflict perspective.

This, however, does not seem to be the case (Green, 1961; Chiricos and Waldo, 1975). For example, Green (1961) argued that correlations between race and social class, on the one hand, and severity of penal sanctions, on the other, are spurious and should disappear with the introduction of control factors which are legally relevant (i.e. nature and number of offenses and of the offenders's prior record). To this extent, the support for the conflict paradigm is undermined. In order to test the validity of the conflict position, this paper afforded an empirical assessment of the conflict orientation.

4.4 VARIABLES OPERATIONALIZATION

This study examined for each defendant a number of variables including socioeconomic status (hereafter referred to as SES) sex, race, residential status, age, criminal record, the types of bail received, the seriousness of the offences and the number of charges.

4.4.1 Extra-legal Variables

4.4.1.1 Socio-economic status

Socio-economic status refers to a ranking system based on income, prestige, education or power. A person's rank based on these standards is his or her socio-economic status. Socioeconomic status has been of interest in criminological research for many years. The study of socioeconomic status as an extra-legal variable and its implications to sentencing outcomes has been well-documented by Hagan (1974b).

There is a substantial body of research literature which emphasizes the importance of socioeconomic status as an essential tool in examining bail decisions. Skolnick (1967), for instance, found that offenders from lower economic strata experienced differential bail dispositions compared to offenders from higher economic strata. Generally, research conducted in the United States has suggested that judges might convict more often, assign higher bail amounts or refuse to grant bail to blacks or persons in lower status occupations (Beeley, 1966; Frazier, et al., 1980; Nagel, 1983).

Canadian research in this area of pretrial release decision and socioeconomic status has provided findings consistent with the American studies. All in all, pretrial decisions have tended to be biased favourably toward those who are of higher socioeconomic status (Hagan, 1974; Morris, 1984).

Several indices for assessing the subjects' SES are available from the social sciences. The three common indices, as noted earlier, are income, occupation and education. A defendant's occupation was used as a measure of his socio-economic status. The Blishen and McRoberts' (1976) scale will be used to establish the defendants' socio-economic status.

In cases where the occupation was not explicit, such as 'labourer', the mean score for all such occupations (i.e. all labourers) was given. Preliminary court monitoring has shown that most defendants would be unemployed. In such cases, the last known occupation of the subject was considered. The last known occupation of the offender was considered important because in bail decision consideration, Judges may view differently between two types of offenders, one who has been on welfare for a long time and the other who has just recently been unemployed.

4.4.1.2 Race

The concept of race as it influences judicial dispositions is perhaps one of the most frequently considered offender characteristics. As early as 1948, in the United States, Lemert and Rosberg, found that race was a significant variable in judicial sentencing in the Los Angeles region. Thornberry (1973) examined dispositional data from the Philadelphia birth cohort study. He concluded that

blacks were treated more severely than their white counterparts. Nagel (1983) using 5,594 defendants first arraigned in criminal court, found that race does influence pretrial decisions. Blacks tend to face higher bonds if bail is set and Caucasians are more likely to be offered cash alternative, instead of bond as condition for release.

Generally, the major thrust of Canadian research in this area has been towards ascertaining the extent to which non-white defendants receive differential treatment in the criminal justice system. Such focus has been pitifully limited in terms of a comparison between whites and non-whites. Nevertheless, the general consensus of existing studies revealed a disproportionate representation of non-whites as compared to whites in Canada's penal institutions.[17] For example, Bienvenue and Latif's (1974) analysis of arrest statistics, revealed that native Indians are "grossly over-represented" in the arrest rates of Winnipeg. Unfortunately, these researchers did not attempt to relate the differential arrest rates to socio-economic variables. Nevertheless, Bienvenue and Latif speculated that the over-representation of native Indians may be the result of their minority status and of certain ecological factors:

> Since native peoples are concentrated in a low income area of the city, differential rates and differential police surveillance needs to be taken

[17] In Canada, persons sentenced to two years or more of imprisonment are transferred to Federal penitentiaries. Those sentenced to less than two years, serve their term within the Provincial correction system.

> into account. These factors may be especially important in explaining the high arrest rate ... (P. 10).

A valuable addition to Canadian research literature was Hagan's comparative study of the working of criminal justice between rural and urban areas (1977a). His research established that there was a marked trend towards equal or legalistic treatment of native offenders in urban communities. However, because of the difference in ability or willingness to pay such fines, native Indians were incarcerated at a higher rate than whites, and

> assuming that willingness and ability to pay fines could be empirically distinguished and that differences could be attributed reliably to the latter, then, it could be argued that the absence of residual differences in treatment indicate discrimination. In short, there are instances where equality of treatment might be called discriminatory (1977b:170).

More recently, research by Morris (1984) on the "widening the net" issue as a prison alternative, demonstrated results consistent to Nagel's (1983) findings. Using a random sample of defendants from three Toronto jails, she found that there were significant statistical differences between blacks and whites in pretrial release decisions. Race is, therefore, included because of the possibility that non-white bias experienced by defendants might lessen their chances of receiving bail or negatively effect bail dispositions.

In the Provincial Judges Court in Winnipeg, Blacks and Asians comprise a small portion of the daily case volume. Native Indians and whites together form the bulk of the lower court case-load. To evaluate the hypothesis that race makes a difference in the types of pretrial release and the amount of bail set, racial groups were dichotomized into whites and non-whites.[18]

4.4.1.3 Sex

Studies that have examined whether a defendant's gender affects decisions have arrived at varying conclusions. The extant research suggests that women are accorded preferential treatment over men (Swigert and Farrell, 1977; Bernstein et al., 1979). Conversely, available research also suggests that men are accorded lighter bail dispositions than women offenders facing similar charges (Bernstein et al., 1977b). In addition, investigations on the effects of gender on dispositions have also found no significant differences between male and female offenders (Green, 1961; Rottman and Simon, 1975; Pope, 1975).[19]

---

[18] Status Indians and Metis, Asians and blacks are included in the category of non-whites.

[19] Recently, feminist criminologists have argued that varied treatments of female offenders by the court were based on the perceptions of the court on the types of offences committed (Smart, 1977; Chesney-Lind, 1978; Reid, 1985). If the activity is unfeminine (violent) the court seems likely to respond harshly. Conversely, female misconduct is overlooked to accorded more lenient treatment if she conforms to female sex-role expectations.

These disparate findings emerge largely from research into the sentencing stage in the criminal justice system. The existing research of gender on criminal court dispositions, however, especially in the early stages of criminal processing, has produced consistent findings. Sex discrimination exists, and findings tend to show that the bias favours women during the pretrial stage.

Nagel (1969) using 2,930 larceny and assault cases, found that in pretrial procedures, male defendants are much less likely than female defendants to be released on bail. In a systematic evaluation of the relationships between sex in various stages of the criminal justice system, Nagel and Hagan (1982) offer several tentative conclusions. Women were found to be more likely than men, other things being equal, to be released on their own recognizance. In a more comprehensive study, Nagel and Hagan (1983) research of 9,068 defendants prosecuted in ten federal jurisdictions between 1974 and 1977 reported a pattern similar to their earlier 1982's findings. For defendants, gender affects the first decision on type of release, with females being more likely to receive the less restrictive release options.

Finally, Kruttschmitt (1984) systematically examined the relationships between sex and both pre and postconviction decisions. She affirmed previous research findings when her data revealed that sex does have a significant effect on pretrial release, with decisions favouring female more than male defendants.

4.4.1.4 Residential Status of the offender (Res)

The strength of the community roots of the offenders in determining the types of pre-trial release decisions were considered important during bail hearings. This assumption is based on the belief that under normal circumstances where the offences do not fall under the mandatory detention clause, the offender with some kinds of community ties, for example, a permanent fixed address, will normally receive a more favourable bail dispositions than a transient offender who has no community ties (Frazier et al., 1980; Nagel, 1983). The explanation for this assumption is tied-in with the ideology underlying the whole pre-trial release system.

The ideology that underpins the bail system is the assurance that the accused will appear for trial on the stipulated date set by the courts. Offender without a fixed address would be perceived as posing a greater risk of non-appearance as compared to those with a more permanent address, and more established community roots. In brief, the offender that is able to show some kinds of community ties - such as having resided in the current address for a certain length of time, or having a family - would generally be released on less onerous conditions, because it is deemed that the offender has much more to lose by his non-appearance as compared to one without any community ties. It was therefore reasonable to assume that judges would generally impose less punitive pretrial release conditions to offenders who had strong community roots as compared to those who lacked them.

Despite this expectation regarding the relationship between the community ties of the offender and the types of pre-trial release decisions, one must advance this relationship rather hesitantly, since the existing research is by no means consistent. Ebbesen and Konecni (1975), in a U.S. study comparing factors used by judges in making bail decisions, found that in a controlled research situation, judges were strongly influenced by defendant's ties to the community as opposed to other factors such as prior criminal record and severity of the offence. But, when judges were confronted with actual bail hearing cases, bail decisions were based almost exclusively on the district attorney's recommendations. The influences of the severity of the crime and local ties had little influences on judges' decisions.

More recently, research by Frazier et al., (1980) on pre-trial release and bail decisions demonstrated that community ties accounted for the most variation concerning the decision of whether a defendant was released on own recognizance or money was required for release. The criminal records and seriousness of the offence of the defendant did not seem to have a major influence on the first stage of the bail decisions.

Similar to Frazier et al., (1980), Nagel examined the extent to which community ties - noted as one of the non-statutory prescribed factors - influence pretrial release decision. She found that those defendants with "substantial

community ties (employment, long term residence and close family relationships), were more likely to be recommended for release on own recognizance", while those with no community ties found it very difficult to secure this type of release (1983:496).

In the present study, community ties were represented in terms of the residential status of the offender. The residential status of the offenders who appeared for bail hearings were grouped into three categories: those with permanent address, those who had no fixed address and those who resided outside the province of Manitoba.

4.4.2 Legal Variables

4.4.2.1 Bail specifications (forms of pretrial release)

Essentially, four forms of bail or conditional release were employed frequently in Winnipeg. These were

1. Release on own undertaking;
2. Release on own recognizance;
3. Release on own recognizance and sureties with conditions;
4. and release with sureties and cash deposits.

Whichever of the four forms of bail was employed, the undertaking was usually conditioned for the personal appearance of the accused in the court having jurisdiction. For example, in conventional bail, i.e. cash and surety, the de-

fendant simply deposited the full amount in cash, as stipulated by the court, to be refunded if he appeared as required and forfeited if he did not.

An index of the administrative practice in Winnipeg for fixing the amount of bail during the preliminary court monitoring is presented in Table 1.

TABLE 1

Classification of Offences and Amount of Bail Set obtained from Preliminary Court Monitoring Sessions at the 'Provincial Judges Courts (1985)'

Offences	Median amount of bail
Drinking and Driving	$500
Assault Causing Bodily Harm (ACBH)	$1000
Sexual Assault	$3500
Armed Robbery	$5000
Theft(Over $200)	$750
Breach of recognizance	$500
Others (mischiefs, etc.)	$300

Notes:

Approximately 100 cases were collected during the preliminary court monitoring sessions.

One other form of bail commonly used in the Provincial Judges Court is release by a judge on the defendant's own recognizance. That is based on the defendant's unsecured promise to appear in court on a specific date and time. Normally, no post-release conditions or supervision was required for own recognizance release.

In this study, pre-trial release is operationalized into three categories; release on own undertaking, release on own recognizance and release on own recognizance with sureties and conditions.

4.4.2.2 Prior criminal record

Generally, the defendant's criminal history was thought to be related to his future criminal behaviour (Clarke, Freeman & Koch, 1976; Pope, 1978). The axiom, "once a thief, always a thief", reflects the belief in the long history of Western law. Thus, the defendant's criminal history would influence the risk of his non-appearance for trial at a future date. Criminal history or record provided an overall measure of the offenders' previous exposure to the criminal justice system. This included not only the number of convictions but also seriousness of the prior convictions. Therefore, the offender's criminal history was considered important in arraignment hearings.

4.4.2.3 Seriousness of the offences and the number of charges

The offense with which the defendant was charged was expected to be related to bail risk for the same reasons as was criminal history. Furthermore, it was assumed that those charged with serious crimes were presumed to be more reluctant than others to appear in court and face possible punishment. The type and seriousness of the offenses was defined on the basis of the seriousness scale developed by Kueneman and Linden (1983) in their study of the Winnipeg Juvenile Court. The Kueneman-Linden seriousness scale closely followed the Sellin-Wolfgang (1964) scale, but with the anomalies removed. This scale is presented in Appendix A.

Multiple charges in the Provincial Judges Docket Courts are common. If more than one charge was filed against the defendant, as was commonly the case, the Kueneman-Linden seriousness scale was employed as a weighting scheme for the principal case. For example, a defendant may have been charged for physical assault and may also face other charges, such as illegal possession of weapon, uttering threats, resisting arrest and mischief, in conjunction with the assault charge. In such cases, the seriousness scale was used only for the criminal charge that carries the most serious penalty upon conviction of the offender.

4.5 STATISTICAL TECHNIQUES EMPLOYED

Statistical analysis of the Bail data was of a three stage nature. The first stage involved a preliminary descriptive analysis of all the variables under investigation. The overview of the variables was fruitful in providing a general picture of the distributional characteristics of the defendants processed through our system of justice.

After the preliminary examination of the distributional characteristics of each of the variables, sets of relationships between variables were investigated. Cross-tabulation analysis was employed to examine the relationship between two variables. The Pearson correlation coefficient (R) or Pearson Product-moment correlation was used to measure the direction and strength of the relationship between two variables. This measurement technique ranges from -1.00 to +1.00, with the former signifying a perfectly negative correlation and the latter a perfectly positive correlation. In addition, the absolute value of 'R' can be used as an index explaining the strength of the relationship. The closer to 1.00 in either direction, the greater the strength of the correlation. Since the strength of a correlation is independent of its direction, we can say that -.10 and +.10 are equal both in strength, that is both are very weak.[20]

[20] To employ Pearson correlation coefficient, it is required that the variables must be measured at the interval levels. Several social science methodologists, however, argue that the Pearson coefficient may be used even if the data satisfy only the assumptions of ordinal-level meas-

Finally, a multivariate analysis was performed to evaluate the importance of a single independent variable on the dependent variable while simultaneously controlling all other variables. Multiple regression analysis was employed in this stage. Multiple regression is a technique which analyzes the relationship between a dependent variable and a set of independent variables. Generally, regression requires that all variables are measured on an interval or ratio scale. "These restrictions are not absolute, however" (Nie, et al., 1975:320). All nominal variables were entered into the analysis as dummy variables. The F test was used to test significance in the multiple regression analysis. It is a test of statistical significance between the dependent and independent variables. This test would indicate the probability that an observed relationship could have occurred by chance. To put it differently, the test is used to establish whether or not the regression analysis is statistically significant. A relationship which has a probability of occuring by chance no more than 0.05 percent of the time will be accepted as a statistical significant relationship. In social science research, common values of significance are frequently set at the .05 or .01 levels.

The F test, as seen in the foregoing discussion, refers to statistical significance of relationships between variables. This, however, does not mean that a relationship is

---

urements (SPSS, 1976:276).

significant in the sense of a strong relationship. The issue of the strength of the relationship is completely different from the statistical significance of a relationship (Hagan, 1974b:361).

For example, it is customary to assess the strength of a relationship by simply noting the significance level attained in a test. For instance, if one test were significant at the .001 level and another at the .05 level, the former would be viewed as the stronger of the two. Viewing these two significance levels indicates in which case confidence in a relationship lies. This can be deceiving, as the significance level attained depends largely upon the sizes of the samples used. If the samples are very large, it is easy to establish significance for even a very slight relationship (Blalock, 1979:162). This means, in effect, that with a large sample, very little is indicated by a statistically significant relationship. Consequently, a measure of association is required.

In regression analysis, the strength of the relationship can be described by examining the coefficient of determination R square. The absolute value of R square can be used as an index explaining the strength of the relationship. R square denotes the proportion of variation in the dependent variable as a result of the introduction of an additional independent variables. It ranges from a minimum of zero to a maximum of 1.0. Consequently, it serves as an index of the strength of the relationship.

4.6 FORMULATION OF HYPOTHESES

The disparity in the amounts and types of bail set has, to date, remained a relatively unexplored area in judicial research. This is especially true in the Province of Manitoba. Therefore, a careful and systematic examination into differences in the amounts and types of bail dispositions seemed warranted.

For the purposes of this research, legal variables consisting of prior criminal record, nature and number of charges were controlled in order to obtain a more accurate assessment of the role of the extra-legal variables. It has, however, been argued that such a technique often results in reducing the relationship between extra-legal variables and dispositional outcomes to the point of spuriousness (Thornberry, 1979). This is because extra-legal variables, for example race and SES, were either unrelated to dispositions or were only spuriously related, since most of their effects would be explained by the legally relevant variables. Nevertheless, some researchers, using the above strategy, have found decision-making bias in terms of extra-legal variables such as race and socio-economic status (Thornberry, 1973:97; Hagan, 1974:116; Holland and Johnson, 1979:230). Hagan, for example, concluded that "the related influences of race and socioeconomic status remained modest, but stubborn in their apparent causal influence ... even when the legal variables of current offence, number of charges and prior record were held constant" (1974:116).

Pretrial research in Manitoba is virtually non-existent. Consequently, this study on pretrial release decision is more descriptive and less analytical. In other words, this study was mainly exploratory, aimed more at discovering important variables influencing pretrial release decision rather than subjecting the pretrial release system to in-depth statistical analysis. It is with the above in mind that this study also empirically assessed several main components of the structural conflict theory, drawing heavily from Chambliss and Seidman's (1982) theory of law.

The hypotheses for this study are as follow:

1. When all contributing factors are considered simultaneously, the residential status of the offender (permanent versus no fixed address) will have a significant positive influence on the types of pre-trial release decision.
2. When all contributing factors are considered simultaneously there will be an inverse relationship between socio-economic status and types of pretrial release decisions.
3. When all contributing factors are considered at the same time, there will be a higher proportion of male defendants released on severe pre-trial release conditions than female defendants.
4. When all contributing factors are considered at the same time, there will be a higher proportion of non-

white receiving severe pre-trial release decision than white defendants.

5. When all contributing factors are considered simultaneously, the actual dollar amount of bail required for release will be higher for those defendants having low SES as compared to those having high socio-economic status.

Chapter V

DATA ANALYSIS

5.1 INTRODUCTION

This chapter presents, describes and analyzes the hypotheses for this study. Data collected for this study were analyzed by using the Statistical Analysis System (SAS), a software system provided for social science research.

5.2 CHARACTERISTICS OF THE OFFENDERS IN THIS STUDY

5.2.1 Sex

A total of 435 cases were collected for this study. Three hundreds and seventy five cases of the offenders or 86 percent were male. Female constituted the remaining 14 percent of the cases. This distribution of male and female offenders was fairly consistent with previous studies in both the United States and Canada concerning pretrial release decisions (Nagel, 1981; Nagel, et al., 1983; Morris, 1984).

5.2.2 Age

The ages of the defendants ranged from 18 years to 65 years. The largest category, representing 27 percent of the defendants, was the 18-21 year category. The age categories

of 22-25 years and 26-29 years followed in terms of frequency with percentages of 23.6 and 13.7 respectively. Only 14.9 percent of the defendants were in the 38+ category. Age as a significant factor in influencing bail decision has not been widely researched, therefore it was difficult to draw any kind of firm comparison with other findings. Nonetheless, consistent with studies on sentencing, the Winnipeg Courts were dealing largely with a fairly young population. Age was categorized into 6 groups in the following table for simplicity of viewing. However, in the regression analysis, the factor age was analyzed as a continuous interval variable, so that valuable information will not be lost.

A frequency distribution of the defendants' age categories is presented in Table 2.

TABLE 2

Frequency Distribution of 435 Offenders by Age For the Month of April 1986

Age	Frequency	Adjusted Frequency Percentage
18 - 21	118	27
22 - 25	103	24
26 - 29	60	14
30 - 33	58	13
34 - 37	31	7
38+	65	15
Total	435	100%

Notes:

As a result of the rounding of percentages within each category, the total percentage may not add to 100 percent.

5.2.3 Race

Four racial groups were observed among the bail applicants: Caucasians, Native Indians (status, non-status and metis), Blacks, and Asians. Fifty-seven percent of the defendants were caucasians. Native Indian offenders followed with a frequency of 39 percent. Other racial minority

groups together constituted about five percent of the offenders. There were 20 offenders for whom on information on race was unavailable.

A frequency distribution concerning the variable race of the offenders is presented in Table 3.

TABLE 3

Frequency Distribution of 415 Offenders, by Race for the Month of April 1986

Race	Frequency	Adjusted Frequency Percentage
Caucasian	241	58
Native Indians	158	38
East Asians	11	3
Blacks	5	1
Total	415	100%

Notes

There were 20 cases where the racial categories of the offenders were unavailable.

5.2.4 Socio-Economic Status (SES)

The SES of the offenders ranged from those unemployed to those with professional occupations. The majority of the offenders were unemployed or on welfare (55 percent) and the next largest group was those in unskilled labour (18 percent). In other words, measured according to the Blishen-McRobert's SES scale, approximately 89 percent of the defendants were in the lower-class category. Less than 9.2 percent of the defendants were in the middle-class range, while the remainder comprising about 3 percent were in the upper-class category.

The occupations of 423 offenders that appeared for arraignment hearings are presented in Table 4.

TABLE 4

Frequency Distribution of 423 Offenders by Occupations for the Month of April 1986

Occupations	Frequency	Adjusted Frequency Percentage
Unemployed/welfare	232	55
Unskilled labourer	76	18
Skilled labourer	67	16
Coaches, instructors Dental hygenists Teachers	39	9
Accountants, economists Biologists, managers Management positions	9	2
Total=	423	100%

Notes:

There are 12 cases where the occupations of the defendants were not available.
As a result of the rounding of percentages within each category, the total percentage may not add up to 100 percent.

5.2.5 Residential status

At the time when these data were collected, approximately 84 percent of the offenders appearing in court had a permanent place of residence in the province. Sixteen percent of the offenders appeared in courts without any known address,

and seven percent had their permanent addresses outside the province of Manitoba. Offenders with known addresses outside the province consisted of only 7 percent of the total number of cases. This third category will be merged with those that had no fixed address at the time of their arraignment hearings.

Table 5 shows the residential status of the offenders at the time they appeared for their arraignment hearings.

TABLE 5

Frequency Distribution of 435 Offenders by the Variable Residential Status for the Month of April 1986

Residential Status	Frequency	Adjusted Frequency Percentage
Permanent Address	364	84
No Fixed Address	68	16
Outside Manitoba	3	0.6
Total=	435	100%

5.2.6 Prior Convictions

The defendants in the present study, emerged as a fairly criminally-oriented group. About 70.6 percent of the defendants had some prior criminal history. Only 29.4 percent had no prior criminal conviction. Specifically, 13 percent had 1 prior conviction and 43 percent had 2 to 9 prior convictions. Forty-four percent of the cases had more than 10 prior convictions, with a maximum of 34 prior convictions. For the purpose of tabulation, prior conviction was categorized into 6 groups. However, in the actual regression analysis, this variable was introduced into the model as a continuous variable.

A frequency distribution of the prior criminal history of the offenders is tabulated in table 6.

TABLE 6

Frequency Distribution of the Offenders Prior Criminal History

Prior Convictions	Frequency	Adjusted Frequency Percentage
0	126	29
1 - 2	103	24
3 - 5	81	19
6 - 8	45	11
9 - 11	33	8
12+	41	10
Total	429	100%

Notes:

There are six cases where the offenders' prior convictions were unavailable.

5.3 CHARACTERISTICS OF THE OFFENCE

The offences committed by the sample of bail applicants, ranged from attempted murder to mischief. The most frequent offence committed was assault which constituted about 26.2 percent. The second and third most common offences were shop-lifting and forgery (fraudulent used of credit-cards,

cheques etc.), with percentages of 16.78 and 10.11, respectively.

All in all, those offences that occurred most frequently were property (break, enter and theft for both residential and commercial buildings) and against persons, with percentages of 46 and 41.2, respectively. Violation of those parts of the Highway Traffic Act that are in the criminal code constituted the least of the overall court cases in Winnipeg (.5 percent). Multiple charges were fairly common. About one-third (31 percent) of the offenders had more than 1 charge and 14 percent had between 3 to 10 charges with a maximum of 31 charges.

A frequency distribution of the characteristics of the offence committed by the offender is presented in Table 7.

Table 7

Frequency Distribution of 435 Offences Committed

in the Month of April 1986

Persons	Property	HTA	Others
Murder=4	Forgery=44	Alcohol=1	False Statements=1
Sexual Assault=10	Trepassing=1	Driving=1	Possession of Weapons=15
Aggravated Assault=32	Mischief(over $1000)=7		Misled Police Officer=5
Common Assault=82	Mischief(under $1000)=13		Obscene Phone Calls=2
Armed Robbery=20	Commercial B & E(over $1000)=18		Disorderly Conduct=31
Utter Threats=29	Commercial B & E(under $1000)=55		
Prostitutions=2	Automobile (theft)=7		
	Residential B & E(over $1000)=12		
	Residential B & E(under $1000)=29		
	Possession of Stolen Goods=14		
N = 179 (41%)	N = 200 (46%)	N = 2 (.5%)	N = 54 (12.4%)

Total = 435 (100%)

5.3.1 Bail Specifications

Of the 435 bail applicants, a total of 413 received pretrial decisions releasing them from custody. The remaining twenty-two cases or 5 percent of the offenders were denied pretrial release. Out of the 5 possible outcomes in a pretrial hearings, only four types of release were observed. Offenders released on their own recognizance made up the majority consisting of approximately 54 percent. The next largest category of types of release was released on own undertaking, comprising approximately 27.58 percent. Offenders released on the condition where some forms of sureties were required comprised about 12.4 percent. Less than one percent of the offenders were released requiring cash deposits and sureties. Only these three categories with the largest number of offenders were used for analysis.

A frequency distribution of 413 offenders by types of pretrial release is presented in Table 8.

TABLE 8

Frequency Distribution of 413 Offenders by Types of Pretrial Release Decision for the Month of April in the Winnipeg Provincial Judges Court

Bail decisions	Frequency	Adjusted Frequency Percentage
Undertaking	120	27.58
Recognizance	237	54.48
Recognizance & Surety	54	12.41
Cash deposits & Surety	2	0.46
Total=	413	100%

Notes:

Twenty-two defendants or 5 percent were denied bail. These cases were hereafter excluded from the analysis. As a result of rounding of percentages, the total percentage may not add up to 100 percent.

5.4 ANALYSIS OF VARIABLES AFFECTING DISPOSITIONS

Multiple regression analyses were performed to assess the hypotheses presented in Chapter three of this thesis. Prior to the application of multiple regression, the data were examined to ascertain that none of the four basic assumptions underlying multiple regressions were violated. Various tests were conducted for:

1. non-linearity between the independent and dependent variables;
2. multicollinearity between and among the variables;
3. and interaction effects among the variables in this study (Nie et al., 1975).

The fourth assumption concerning the stipulation that the variables are measured either on interval or ratio scale had been met. Dummy variables were created for any nominal variables. Although one of the dependent variables (types of release) is measured on ordinal level, there are strong arguments for assuming that the use of parametric statistics with this type of measurement will not confound the analyses (Bornstedt, et al., 1971). The sample used, as noted earlier, was nonrandom. The nonrandomness of the sample should not pose a major problem as randomization is only required if the researcher's task is not descriptive but inferential to the general population.[21]

5.4.1 Linearity

One of the fundamental assumptions underlying regression is that the relationships between the independent and dependent variables are linear. To ensure that certain independent variables had linear relationship with the dependent

[21] It should be noted that although the sample obtained for this study was not randomized, significant tests are still relevant to this study in terms of ascertaining whether the variables under study are significantly related.

variables the following tests were performed:

1. Scatterplots were produced between the dependent and the independent variables through the use of the SAS Proc Plot command. The plots were visually assessed for curvilinear relationships.
2. Residual plots were also produced between the dependent and independent variables and the relationship visually assessed for curvilinearity. Least square regression line was drawn on the plot using the SAS VREF=0 option.

Several independent variables were dichotomous and therefore, by definition these variables (sex, race, residence) had linear relationships with the dependent variables. However, linearity tests were performed on the following variables: SES, Age (offenders' age in years), Prior Criminal History, Number of Charges and Seriousness of the Offence committed. The results were that linearity did not appear to be a major problem.

5.4.2 Multicollinearity

Multicollinearity refers to situation in which some or all of the independent variables are very highly intercorrelated. This means that independent variables are a linear function of each other in the equation, for example, occupation and income. The effect of this is to produce regres-

sion estimates with inflated variances. In other words, the beta coefficients, that is, the partial standardized regression coefficients which are indicative of the relative strength and direction of the independent/dependent variables relationship, are unreliable and therefore create problem in testing the hypotheses.

There are two ways of diagnosing collinearity problems. SAS (1982) proc correlation program generates a bivariate correlation matrix for all the variables under study. A bivariate matrix, however, was inadequate for present purpose. Instead, a multiple correlation matrix procedure was needed. SAS collinearity diagnostic program was found to be suitable and was, therefore, used. This procedure had the added advantage of detecting collinearity between two or more variables simultaneously. This program produces: condition index, eigenvalues and the variance-decomposition proportions. Upon application of the SAS collinearity matrix procedure, multicollinearity did not appear to be a problem.

5.4.3 Interaction Effects

In regression analysis it is assumed that the effects of independent variables are additive. Interaction effect occurs between independent variables when the effect of one independent variable on the dependent variable depends on the level of the second independent variable. That is, independent variables are not affecting the dependent variable

separately and indepedently, for example, occupation and education will typically have an interacting effect on income.

In studies on pretrial release decision, it is often noted that release decisions may be affected jointly by numerous factors (Pope, 1978-79). The most widely used approach to detecting the problem of interaction relationship is the inclusion of multiplicative terms in the regression equation. For example, the equation Y=A+B1X1+B2X2+B3X3X1X2 where X1 and X2 are the two predictor variables, and the multiplicative term is X1X2. This regression equation was used for all the independent variables. The R square, along with the beta coefficients and their significance were then examined to determined whether the interaction effects were significantly affecting or adding to the explanation of the variation in the dependent variables. Interaction effects were found significant only in two of the independent variables.

The independent variable race was found to have a probability of greater than .05 (that is P>0.34) and Type III sum of squares of 0.1387 (that is, beta 0.000). However, with the inclusion of multiplicative terms prior conviction and race into the regression equation, the probability become significant (P>F=0.04) and the Type III sum of squares increased to 4.852 (Beta 0.2). This suggested that the independent variable race by itself did not contribute to any variance in the dependent types of release, but together

with prior conviction, the effect was additive. The rest of the predictor variables did not contribute to the explanation of the variance in the dependent variable over that which had already been accounted for.

Table 9 shows the results of testing for interaction effects of race and prior conviction.

TABLE 9

Test for Interaction Effects for the Variables Race and Prior Conviction

Variables	Probability=F	Type III SS
Seriousness	0.11	2.00
Prior conviction	0.001	8.16
Number of charges	0.85	0.09
Residential status	0.001	5.45
Age	0.02	2.84
Race	0.34	0.13
Prior Conviction*Race	0.04	4.85
Sex	0.36	0.59

Probability F=0.0001

R square=0.09

5.5 ANALYSIS OF HYPOTHESES

5.5.1 Hypothesis One

It was suggested in the first hypothesis that when all contributing factors were considered at the same time, defendants with permanent address will receive a less severe type of pre-trial release. Conversely, stricter forms of release condition will be imposed on the defendant who has no known address.

The following predictor variables were entered into the regression equation: prior conviction, seriousness of the offences, number of charges, socio-economic status (coded as SES), residential status age (age of the offenders), race, interactive variable (coded as race1) and sex. The dependent variable is types of release.

The first step in the regression analysis was to determine the effects of the legal variables - prior conviction, seriousness of the offence and number of charges - on the dependent variable types of release. The second stage involved the addition of extra-legal variables to the regression equation.

Equation 1 of Table 10 represents the model for legal and community variables. The overall regression equation was statistically significant at the .001 level. The R square equalled 0.05, such that five percent of the linear variation of the dependent variable types of release was ex-

plained by these independent variables. The coefficient of nondetermination (that is, 1-R square = K squared) was equalled to approximately 95 percent. This means 95 percent of the variance of the dependent variable types of release was unaccounted for.

Residential status of the offender was statistically significant at the 0.01 level (P>T=0.003). When the standardized estimate of residential status, which is the standardized partial beta coefficient, was compared with other predictors, residential status emerged as the factor with the highest influence on the dependent variable; types of release (0.15). It was found statistically significant that offenders who appeared during their arraignment hearings with permanent address status will be released on a less punitive type of pretrial release condition. The next statistically significant variable was seriousness of the offence (P>T=0.07). It was found to have a standardized partial beta coefficient of -0.089. Since the seriousness scale is ordered in such a manner that the greater the magnitude of the ranking the less severe is the offence, hence, the more serious the offence that the accused was charged with, the more severe will pre-trial release decision be. The third statistically significant variable is prior criminal conviction of the defendant (P>T=0.01), with a standardized partial beta coefficient of 0.12. The more prior convictions the defendant had to his criminal history, the greater the

likelihood that the offender pre-trial release will be severe.

In equation 2, five extra-legal variables were added to the regression equation model. Equation 2 was attempted with the objective of ascertaining whether the original relationship persisted with the introduction of 5 predictor variables. If the relationship no longer exists, after controlling for the other variable then it was a spurious one. The overall regression was statistically significant at the .01 level. The R square was equalled to 0.065, indicating that 6 percent of the linear variance in typrel was explained by these nine predictor variables. This increase in R square was minimal from 0.05 to 0.06. The legal variables and extra-legal variable - residential status - remained relatively unchanged.

Table 10 presents the determinants of the pre-trial release decisions.

TABLE 10

Regression Equation of the Cumulative Influence of the Legal and Extra-Legal Variables on the Dependent Variable - Types of Release

Independent Var.	Dependent Variable (typrel)			
	Model 1	Prob=T	Model 2	Prob=T
Seriousness	-0.08	0.07	-0.10	0.05
Prior Conviction	0.13	0.01	0.10	0.09
Number of charges	0.02	0.76	0.02	0.74
Residential status	0.15	0.003	0.14	0.005
SES			-0.02	0.70
Age			-0.10	0.04
Race			-0.05	0.40
Race1			0.07	0.26
Sex			-0.04	0.48
Probability F=	0.001		0.01	
R square=	0.05		0.06	
Adjusted R=	0.04		0.04	

5.5.2 Hypothesis Two

The second hypothesis predicted that there would be an inverse relationship between socio-economic status and types of pre-trial release decision. Simply stated, the higher

the offender's socio-economic status the less severe would be the pre-trial release decision and vice versa.

As similar regression model was used for hypothesis one, table 10 equation will be referred to in explaining hypothesis two. The overall regression was statistically significant at the .01 level, with an R square equalled to 0.06. The standardized partial beta coefficient for socio-economic status was -0.02, with probability>T equalled to 0.70. The probability>T implies that the value of the parameter is likely to be equalled to zero, therefore the independent variable did not contribute significantly to the model. There was no statistically significant relationship between socio-economic status and the severity in the types of pre-trial release decision.

5.5.3 Hypothesis Three

It was suggested that when all contributing factors were simultaneously considered, there would be a higher proportion of male offenders released on more severe pre-trial conditions than female offenders. There were two stages to these regression analysis. The first step of the regression analysis examined the legal variables excluding number of charges. This variable was removed from the equation because it did not contribute to the linear variance of the dependent variable, as indicated previously in Table 9. SES was also excluded because it was found not to be signifi-

cant. The extra-legal independent variables are res (residential status), sex, age, race and race1 (interactive variable). In the first equation, the overall R square was 0.05. It was statistically significant at the 0.001 level. Prior conviction had the highest standardized partial beta coefficient of .13 and a probability>T of 0.01. The more prior convictions an offender had, the greater the likelihood that a more severe pre-trial release condition would be imposed. The coefficient of non-determination was approximately 0.95, which means that about 95 percent of the variation of the dependent variable was unaccounted for.

In the second equation, the overall R square of 0.06 was statistically significant at the 0.001 level. The independent variable sex had a partial beta coefficient of -0.03. If the offender was female, the pre-trial release condition would be less severe as compared to male offenders. The probability>T value was 0.56. This implied that the independent variable sex did not contribute significantly to the regression equation.

The results of the regression analysis to determine the influence of the variable sex while controlling for all other variables are tabulated in Table 11.

TABLE 11

Multiple Regression of Legal and Social Variables For 435 Bail Applicants to Determine the Influence of Sex on the Types of Bail Release

Independent Var.	Dependent Variable (typrel)			
	Model 1	Prob=T	Model 2	Prob=T
Seriousness	-0.09	0.07	-0.10	0.04
Prior Conviction	0.14	0.006	0.11	0.06
Residential Status			0.14	0.004
Sex			-0.03	0.56
Age			-0.10	0.04
Race			-0.04	0.39
Race1			0.06	0.04
Probability=	0.004		0.001	
R square=	0.03		0.06	
Adjusted R=	0.02		0.04	

5.5.4 Hypothesis Four

Another extra-legal variable that was hypothesized to affect bail decision was race. It was previously suggested that when all contributing factors were considered at the same time, there will be a higher proportion of non-white receiving more severe pre-trial release decision than white

defendants. In this regression model the independent legal variables, number of charges, and extra-legal variables SES and sex were removed from the analysis as all three were shown to be insignificant and did not contribute to the linear variation in the dependent variable.

The overall R square was 0.09 with a statistical significant level equal to 0.001. The probability>F for the independent variable race in the type III sum of squares was 0.65. The type III sum of squares Pr>F is equivalent to the result of a T test. In this instance, the Pr>F (0.65) indicated that the contribution of the independent variable (race) to the linear variance of the dependent variable was not significant. The type III sum of squares is equivalent to the standardized beta; in this case the type III sum of squares was 0.14. However, when the interactive term was added to the equation the Pr>F became significant at 0.04 and the type III sum of squares increased to 4.491. This implied that race as an independent variable did not have any significant impact on the dependent variable types of release, but in conjuction with prior conviction the influence on the dependent variable become significant.

The results of the regression analysis to determine the impact of the variable race, while controlling for all other variables, on the types of release are shown in Table 12.

TABLE 12

Multiple Regression of Legal and Extra-Legal Variables with the Exclusion of Number of Charges, Socioeconomic Status and Sex

Independent Var.	Dependent Variable (typrel)	
	Type III SS	Prob=F
Seriousness	2.485	0.06
Prior Conviction	8.891	0.002
Residential Status	5.604	0.005
Age	2.905	0.04
Race	0.141	0.65
Prior Conviction*Race	4.491	0.04

Prcon & race	Estimate	T for Ho: Parameter=0	Pr>T
0 non-white	0.371	1.54	0.125
0 white	0.000		
1 non-white	0.566	2.52	0.012
1 white	0.000		
2 non-white	no relationship		
2 white			

Probability F=0.0001

R square=0.089

N=355

5.5.5 Hypothesis Five

The final hypothesis to be investigated in this study suggested that when all factors are considered, socio-economic status would have the greatest contribution to the amount of dollars required for release. The dependent variable release on own recognizance was used to assess this hypothesis. The independent legal variables seriousness of the offence, prior conviction, number of charges; extra-legal variables residential status, SES (socio-economic status), Age, race and sex were added into the model against the dependent variable release on own recognizance.

The overall R square was 0.16, which means that 16 percent of the linear variation in the dependent variable was explained by these predictors. The coefficient of non-determination, that is the unaccounted for variation, was 84 percent. The overall regression was statistically significant at the 0.001 level. The only significant standardized regression coefficients (beta) were seriousness of the offence and number of charges, with standardized estimates of -0.30 and 0.21 respectively. None of the extra-legal variables was statistically significant. SES, the independent variable concern, had a probability>T equalled to 0.41 with a standardized beta coefficient of -0.05. There was no support for the final hypothesis.

The results of the final regression run determining the amount of dollars required for release are presented in Table 13.

TABLE 13

Multiple Regression of Legal and Extra-Legal Variables with Recognizance as the Dependent Variable

Independent Var.	Dependent Variable	
	Zero-order corr.	Prob=T
Seriousness	-0.30	0.001
Prior Conviction	0.008	0.91
Number of Charges	0.20	0.001
Res	0.06	0.35
SES	-0.05	0.41
Age	-0.07	0.27
Race	-0.08	0.28
Sex	-0.001	0.98

Probability F=0.001

R square=0.16

Adjusted R=0.12

5.6 DISCUSSION

Overall, the findings of this study were relatively consistent with previous research which found that legal variables were more important than extra-legal variables in predicting pre-trial release decisions. The most significant legal variables contribution to disposition were seriousness of the offence and prior conviction of the offenders. These two legal variables showed the strongest relationship concerning court decisions regarding type of release. However, number of charges did not show any statistically significant relationship with type of release. There are two possible explanations for the lack of significant relationship between number of charges and types of release decision.

One possible explanation for the lack of significant relationship between number of charges and type of release can be gleaned from the fact that it is common practice among arresting peace officers to lay multiple charges for a single infraction. For example, an offender may be arrested for armed robbery. Besides the armed robbery charged, the offender is likely to face an addition charge of unlawful possession of a firearm which was used during the commission of the crime. According to the principal of transit in rem judicatum, that is, the first conviction shall be a 'bar to all further proceedings for the same offence', the second charge of illegal possession would likely be quashed. This is justifiable because the second charge was an essential part of the first offense.

Another possible and most probable reason is that multiple charges practice by the police produces negotiable cases and also provided both defense counsel and the Crown with various matters for the lawyers to consolidate. Multiple charges make case negotiation imperative, which in turns takes the work of both counsels into the informal environment of pretrial discussions. Informal pre-trial discussions are normally directed toward extracting from the Crown a promise not to recommend a more severe pre-trial release conditions from the judge in exchange for a guilty plea form the defendant on a lesser charge. There are advantages for informal plea bargainings for the affected parties. The motive for the defendant for plea bargaining is to get away with the smallest penalty and /or the least serious police record possible; in other words, the defendant is rewarded for co-operation. For the court, plea bargaining allows the accused persons to co-operate with the system and thus alleviating the already crowded court calender. It is perhaps within the context of this legal principle and plea bargaining that multiple charges did not significantly affect the types of release decisions.

The lack of significant contribution of multiple charges to the types of release decision is not new in criminological research. In a study of pre-trial release and bail decisions, Frazier et al., (1980) coded multiple charges as number of offences, this variable was not included in Frazi-

er's final analysis because it was not significantly related to the dependent variable. Although, seriousness of the offence and prior conviction had beta coefficients of -.10 and +10 respectively, research in this area in the criminal process did not show marked differences in betas with the present study (see Pope, 1978; Frazier, et al., 1980; I. Nagel, 1981).

In this study, extra-legal variables contributed minimally in determining types of release decision. The only statistically significant impact on the dependent variable types of release was the residential status of the offender. Residential status as a predictor variable had the highest beta of .14 relative to the contributions of the legal variables. The importance of this variable should not come as a surprise. As previously noted, the Criminal Code imposes upon the Crown the duty not to deny reasonable bail without just cause. The cardinal duty of the Justice is to release the offender on an undertaking without condition. This duty is displaced only when the prosecutor can either justify more oppressive terms of release, or in the limited number of instances where the 'reverse onus' rule comes into force. Whether the onus falls on either the Crown or the accused, the Justice must be guided by only two considerations: that the proposed order is the minimum necessary to ensure attendance in court; and a more demanding order of release is only necessary in the public interests. Some of the perti-

nent factors in considering the conditions for release are: the seriousness of the offence, strength of the crown's case, prior criminal history and community roots (in this instance, the existence or non-existence of a permanent address). The primary concern of the Crown was the assurance of the attendance of the accused, having a permanent fixed address was considered sufficient indication, in most cases, of assurance of attendance in court. That seriousness of the offense variable did not have a stronger impact upon the dependent variable may be attributed to the fact that most of the offences fell in the middle range of the seriousness scale. One would suspect, in the fairly close beta coefficient differences between seriousness of the offence and residential status, that if the cases were more evenly distributed, seriousness of the offense may predominate in influencing the dependent variable.

Previous studies in determining the effects of extra-legal variables such as SES, race and sex upon types of court dispositions had consistently revealed some forms of discrimination against lower social class and racial minority offenders (Hagan, 1977a; I. Nagel, 1982; Kruttschmitt, 1984). The conflict theorists have given a central place in their work to the effects of class to the extent that lower social class offenders are felt to be the victims of the justice system. Furthermore, offenders belonging to racial minorities were seen as being more harshly treated as com-

pared to the dominant racial groups in the criminal justice system. Conflict theorists argued that deliberate repression by the middle and upper-class on the lower-class and racial minorities was due to either to the fact that lower-class offenders and racial minorities fit the delinquent stereotypes held by middle-class professionals working in the system, or because these two social groups lack the power to resist the imposition of the delinquent label. In addition to SES and race, the conflict theorists also contend that court dispositions are tied to gender. In general, this perspective reflects the view that the courts perceive female offenders in a traditional manner as less dangerous when they commit criminal acts than male offenders (Nagel, 1981). Consequently, female offenders are more likely to get less onerous pre-trial release decisions than male offenders.

Despite these expectations regarding all three extra-legal variables, the relationships between these three variables with court decisions (bail) were found to be very weak and not significant. A possible explanation for the unexpected findings of this study to previous findings could be attributed to the possibility of uniform practices among judges in handling down court decisions. As the volume of daily cases heard in court has increased, the time needed to consider each case carefully and the ability to quickly collect and digest information needed to make important early

decisions has decreased for individual judges. Coping with the large number of defendants and the overwhelming amount of information that must be complied on each case, judges in the lower courts frequently hand down decisions regardless of the offenders' legal and extra-legal attributes. This hypothesis was borned out by Friedland's (1965) study of the Toronto Court. He found that most judges handed down bail decisions that are perfunctory and therefore fairly uniform in nature. One other possible explanation for the lack of a strong relationships between defendants' legal characteristics and bail decisions is that the defendants in this study were charged with less serious offences than in the other studies. When controls for seriousness of offences were introduced, no stronger relationship appeared. All in all, the rather weak overall contributions of both the legal and extra-legal factors lend support to this position of the perfunctory nature of reaching bail decisions.

Interaction was found among two independent variables. Race and prior conviction showed certain degree of interaction effect. The data (see table 11) indicated, that generally, while controlling for prior conviction non-white offenders received more severe bail release decisions than white offenders. This suggested that some forms of racial discrimination existed among defendants with prior convictions. The overall influence of this interactive variable on pre-trial release decision was, however, minimal.

Finally, unlike many other studies of pretrial release, this study was fortunate to have information on the identity of the judges presiding at the arraignment hearings. There were a total of 16 judges at the time these data were collected. The data regarding judges were designed using a coding system that does not permit individual identification of the judicial officers. Since the interest of this research is not in particular judges, but rather in the variation of decisions taken by judge as a group, judge as a variable was controlled and introduced into the regression equation with all the legal and extra-legal variables. While the regression analyses tables of all the judges will not be presented, it is sufficient to note that none of the judges in the sample displayed significant bias against defendants in terms of extra-legal factors.

According to the conflict perspective, it is expected that some forms of discriminatory practices exist. It has been argued that the structure of the legal system is built in such a way that there exists an unequal interaction between middle-class professionals and largely the lower-class offenders. In this unequal interaction, the lower-class offenders are often discriminated against. It is surprising that no forms of discriminatory practices were found among the judges in their decisions. A possible explanation for these findings can be attributed to the phenomenon known as 'Judge shopping'.

'Judge shopping' is a social process synonymous to grocery shopping, but in this instance, defense counsels literally 'shop' for the judge whom they will attempt to mount a defense where the likelihood of attaining favourable objectives for their clients are high. The phenomenon of 'judge shopping' essentially accomplishes two prime objectives:

1. it allows the defense counsels, who are veterans of the system, to argue for their clients only before judges who were known to be less punitive in imposing bail release conditions; and
2. under the guise of doing the best for their clients, defense counsels were in fact milking the system.[22] This was accomplished by obtaining remand for their clients, justified by the plea for more time to collect particulars from their clients. With each remand defense counsels (especially legal aid) were paid by the province.

The overall consequence of these objectives was, tersely summed up in the words of one of the judges;

> We have a system of arraignment hearings where certain judges have enormous volume of cases to dispense, while other had to deal with cases that are often remanded to another date (Interview:

[22] It should be noted that the reader should exercise caution in interpreting this statement in a conclusive and deterministic manner. Since, only a limited number of court personnel (5 judicial administrators) were informally interviewed, it thus represents the viewpoint of a small segment of the members working in the judicial system. This view may not hold if more detailed interviews were conducted.

April 86, PSB).

Perhaps, as a consequence of the inclination of defense counsel searching for the most lenient judge, we have 5 judges presiding over 90 percent of arraignment hearings, with the rest (10 judges) presiding less than 10 percent of the cases in this study. Although, there may be legitimate reasons for remand, for example, lack of sufficient information or report for psychiatric check-up etc., generally the judges interviewed and members of the police court unit affirmed the existence of lawyers exploiting the system by searching for judges that would benefit their clients.

Chapter VI

SUMMARY AND CONCLUSION

6.1 INTRODUCTION

This thesis was undertaken with the overall objective of extending the existing socio-legal literature in a critical area of the criminal justice system: judicial interim release. It was with this in mind, that an important question was raised about the influence of defendants' social characteristics - extra-legal factors - on pretrial decisions. Consequently, attention was focused upon two pretrial decisions:

1. types of release conditions; and
2. the amount of dollars requested for release.

The analytical conflict orientation was adopted as the theoretical base in exploring the administration of bail after the Bail Reform Act of 1972.

The data upon which this study was based were made available from the Police Court Unit's court files. Four hundred and thirty five cases were collected for this study. Due to the paucity of pretrial research literature in Canadian criminology, the methodology that was employed in the present

investigation did not completely replicate previous research. It is perhaps useful at this juncture, to examine findings on bail decisions in the Winnipeg Provincial Judges Court.

6.2 FINDINGS

The socioeconomic status of the offender and its effects on judicial processes has received a great deal of attention in American and Canadian research. In the present study, although a relationship between socioeconomic status of the offender and bail decision was observed, it was very weak and not statistically significant.

Generally, previous research on gender found that female offenders were frequently processed more leniently than male offenders throughout the system. In the present study, it was found that sex was not related significantly to pretrial release decisions (see table 11).

The racial variable has often been the subject of much research efforts among scholars in the area of criminology and sociology of law. This study found that race had no effect on the dependent variable. An unanticipated finding that emerged from this study, however, was that the race variable interacted with the prior conviction variable to produce a significant relationship with bail decisions. Among offenders who had prior convictions, bail decisions favoured white as compared to non-white offenders.

When all extra-legal variables were added to the equation in order to determine their combined contribution to the amount of dollars required for release, no significant relationship was found.

Previous studies have produced contradictory results on the the importance of community ties as they relate to types of bail decisions. However, in this study, the residential status of the offenders was found to have a significant influence on pretrial release. Persons with fixed addresses were more likely to obtain pretrial release on favourable terms than were transients of no fixed address.

The results of the present investigation, generally, were consistent with previous findings, which found legal variables more important than extra-legal variables in predicting bail dispositions. The important legal variables were Seriousness of the Offence and Number of Prior Convictions that the offender had at the time of the arraignment hearings. The court handed down the most severe dispositions to offenders who committed the most serious offences, and to those with previous criminal records (criminal history) suggesting chronic involvement in delinquency and crime.

In addition to the above findings, discussions with court personnel yielded some information that suggested practises that were not included in the present data. It was suggested (through interviews of court personnel) that defense

counsel occasionally had their cases remanded to future dates in order that a judge known for handing down lenient decisions would be presiding. A court administrator pointed out that although the judges' schedules (time-table) were arranged one month in advance and kept confidential from counsel - until the day prior to the actual court date - nonetheless, knowledge of its content often leaked out to counsel (see Appendix E). Subsequently, counsel frequently take remedial measures to have trial dates for their clients sloted on a specific court date when a less punitive judge would be presiding. Consequently, a few of the judges presided over 90 percent of arraignment hearings, while the remaining cases were heard by more than 10 judges in the present study. Undoubtedly, having cases heard before Judges known for their leniency would affect bail decisions. This important question was beyond the scope of the present study, although it requires further analysis in future research.

Another germane factor that was uncovered concerned the tendency of some defense counsel to exploit the system by requesting numerous remands for their clients. It was pointed out by a member of the Police Court Unit that the whole system is played "like a game" (Interviewed, April, 1986, Public Safety Building). Lawyers often pre-arranged a postponement of their clients arraignment hearings with the crown counsel before the daily court session begins. Sub-

sequently, the crown counsel requested that the hearings for these cases be remanded to future dates. With each remand, counsel (legal aid) received substantial fees without the need of the accused appearing in court. Reasons for this practice and the extent to which it affects the administration of bail would require more indepth research at a future date.

Apart from the discovery of a number of other possible factors that may have affected bail decisions, generally, the results of this study were consistent with previous research regarding the importance of legal variables in determining dispositions in the Winnipeg courts. Insofar as the findings regarding the importance of the relationship between legal variables and court decisions were similar to previous research conducted in this area of judicial process, it is reasonable to conclude that the results were not just peculiar to the present sample or artifacts of this research design.

The main conclusion that can be drawn from this study is that, since the implementation of the Bail Act, the attitude in the administration of bail decisions by the courts has definitely shifted from releasing offenders on more onerous conditions to releasing them on less onerous conditions. This is clearly in keeping with the intent of the new bail legislation. Before the Bail Reform Act was introduced, the attitude of the courts toward the offender appeared to be

that, although the accused was innocent before the law, he had to show cause for his release. The onus of proof of innocence was on the accused. Consequently, many offenders remained in pretrial detention and those who were released received punitive bail decisions as conditions for their release. The findings of this study affirmed the intent of the Act by revealing that over 80 percent of the offenders were released on the two least onerous conditions, while 12 percent of the offenders required some form of a surety as a condition for release, and less than one percent required cash deposits for release (see table 8).

A major conclusion of this study is that, by and large, this aspect of justice was administered fairly equally to all in the courts. This conclusion was reached because the variables Number of Prior Conviction and the Seriousness of the Offence committed by the accused explained most of the variance in types of release. Inasmuch as the legal variables explained most of the variance in decision-making and not the extra-legal variables, it seemed reasonable to conclude that, in this particular instance, support for the conflict theory is weak. However, before any attempt can be made to make this a definitive conclusion and to apply the findings generally, it is necessary to replicate the study elsewhere and to articulate several caveats with regard to the analysis carried out in this study.

6.3 LIMITATIONS OF THE DATA

First, the data collected for this study were police record court files of offenders that appeared for bail hearings in the month of April 1986. There are a number of salient factors that must be acknowledged in using this type of information. The use of police record files as a secondary data source was limited in several respects. It has the potential of being a biased version because it lacked accuracy in recording social characteristics of the offenders. For instance, the racial identification of offenders was obtained from three areas; RCMP's computerized printout, pretrial preliminary interview sheets and the subjective judgement of the court unit typist. The first two methods of ascertaining the offender's race should not have been problematic. However, the court unit typist's judgment on the offender's race may have been erroneous because it was based in part on the skin colour code contained in the police report. For example, the characteristics of the offender, height, skin tone, eye colour and hair colour, are often recorded in police report. If the offender's skin colour was coded as dark or dark brown (not black) frequently that individual was designated as native or of native origin. This identification of an offender's race on the basis of his/her skin tone can be incorrect, as a dark-brown individual may not be of native descent. Hence, the accuracy of the typist's judgement was dubious with respect to the variable race.

Another major problem associated with the present study had to do with the representativeness of the data. The data for this study represented cases heard from only two out of the four courts which together comprise the Provincial Judges Court. The hearings from the other two courts were unavailable at the time of this study. Although cases obtained were certainly representative of the two courts (A and B), they were not representative of all of the arraignment hearings in all the four courts during the time when the data for this study was collected. As a result, one should be cautious about drawing conclusions on the basis of the findings in this study.

Finally, the data made available for this study lacked detailed information concerning certain variables that may affect court decisions. Information concerning the personal appearance of the offenders, (styles of dress, hygiene etc.,) the public prosecutors' recommendations, defense counsels' recommendations and the probation department's recommendations were not obtained as part of the research design. The omission of these potentially significant variables made it impossible to ascertain their contributions to bail decisions. A consequence of this omission of probable relevant information was the impossibility of determining whether any of these variables were related to ones examined in this study and if so, to what extent interaction existed among the variabes that would have influenced pretrial release decisions.

While a number of interesting relationships were found between the characteristics of defendants and the administration of bail, it is necessary to keep the above-mentioned limitations in mind. Notwithstanding the limitations of the data provided for this research, the police court files provided an excellent source of information and an opportunity to examine the responses of the criminal justice system to those who are entangled in it.

6.4 RECOMMENDATIONS

In this study, several weaknesses in the administration of the bail system had been uncovered. If these weaknesses can be remedied, the administration of pretrial release would be brought that much closer to the long-sought ideal of dispensing fair and equitable justice for all. On the basis of the foregoing, the following recommendations are advanced concerning the administration of pretrial release.

6.4.1 Remand

It was noted previously that some defense counsel (especially legal aid) are alleged to use the system to their personal advantage.[23] Defense counsel shop for judges known

[23] This conclusion must remain tentative and subject to further and more detailed analysis, since it is only reached as a result of a limited interviews conducted by this author on court personnel. It thus represents a one-sided view of the working of the system as perceived by the Judges. It is with this cautionary note of the suspected abuse of the system that the recommendation is based

for handing down less punitive decisions and avoid particularly punitive or unsympathetic one. The abuse is perhaps not so much the fault of defense counsel as a lack of more clear-cut regulations governing the number of remands allowed in the bail system. A possible solution to remedy this flaw in the system, is to tighten the regulations governing the maximum number of remands allowed for an offender, except for certain extenuating circumstances where defense counsel are able to show cause for further remands. The effects of tightening the regulations governing remand would lower the court's workload, and thus generates more court time for each judge to hear individual cases.

6.4.2 A System of Scoring

Discretionary abuse of power was not evident in the data provided for this study, however, informal interviews with several of the judiciary personnel revealed that frequently differential bail decisions were handed down for relatively identical offences (Interview: April 86, Public Safety Building). The root of differential bail decisions was the differential importance of legal variables - Seriousness of the Offence and Number of Prior Conviction - as perceived by individual judges.

---

upon.

To ensure that equitable justice is administered to all during pretrial release hearings, it is recommended that a point-score system should be established to assist the court in assessing whether or not an offender is a good bail risk (this system was suggested by the Manhattan Bail Project). A defendant, for example who had no previous conviction, would receive 10 points and be considered a good bail risk. On the other hand, an offender who had a long history of criminal convictions and charge with a major indictable offense would receive 1 point and therefore be designated as a bad bail risk. This system of assessment does not necessarily exclude judicial discretion. Rather, it serves as a guideline to help reduce bail variations between courts. It also ensures that bail decision is taken in the light of the basic minimum information about the accused. In many cases, the Magistrates decide bail applications with very little knowledge of the defendants' backgrounds coupled with an excessive case-load. These prevent rational exercise of their discretion and force the judiciary to rely on their own sense of value system. Therefore, the point-score system would provide some objective grounds to assure parity in pretrial release decision.

6.5 THEORETICAL IMPLICATIONS

The theoretical implications of the findings in this study are twofold. On the one hand, the overall results did not appear to be consonant with the conflict perspective. The only extra-legal variable that showed some kind of relationship with bail decisions was the residential status of the offenders. Explicit in the successful functioning of the bail system is the assumption that the accused will appear for trial. Having a stable abode where the accused can be reached and supervised necessarily becomes important in setting the terms of release. For pragmatic consideration, a transient with no fixed address would pose a greater bail risk than one with a permanent address. Furthermore, it is more difficult for the court to assure that the transient is abiding to the conditions set down by the court. Thus, due to practical considerations and the intent of the Bail Act, the court frequently employed more onerous release conditions for transients relative to those with permanent addresses.

On the other hand, a fairly large proportion of the variance in court decisions remained unexplained. As most of the bail decision were explained by variables outside the scope of this research it is necessary to draw upon other factors that may provide an explanation for court decisions. This leads to a consideration of possible directions for future research into variables that may affect bail decisions.

6.6 SUGGESTIONS FOR FUTURE RESEARCH

The symbolic interactionist views the criminal justice system and the administration of justice as a social construct, mediated by symbol exchange, and guided by social control agents' perceptions and definitions of the situation. Adopting this view interactionists argue that it is important to address the values and attitudes of those people in positions of power responding to deviance in order to explain criminal justice process decisions (Rubington and Weinberg, 1981). This emphasis suggests an expanded theoretical model to include certain characteristics of courtroom participants. This might include the personal appearance of the offender in court. Those who came to court with well-groomed hair and were neatly dressed, and those who wore their clothes sloppily with unkempt hair, may have been subject to differential judicial bail decisions.

One of the important cues judged crucial in this process of symbolic interaction is perception of the subject's demeanour. Offenders who were able to show a certain degree of deference may be perceived as adhering to the conventional norms and, for that reason may have received more favourable bail decisions. Frazier et al., (1980) for example, found that passive deference to judges appeared to be most desirable in court resulting in a higher probability of receiving favourable bail dispositions. Furthermore, in a personal interview with a Magistrate, it was pointed out that, if an

offender appeared in court drunk or with unkempt hair, the "detoxification centre and contempt of court charge" would likely be added to the original charge before pretrial hearings will proceed (Interview: April 86 Public Safety Building). Future research should certainly consider the influences of the above-mentioned variables.

Future research should also focus on the interaction among criminal justice personnel who are involved with the processing of judicial interim release decisions. The interdependence and interaction, between judge, crown and defense counsel may shed new light on the manner in which judges filter out irrelevant information before handing down pretrial decisions. Related to this area of interaction among the three key actors, it would be necessary to examine whether judges set bail conditions in complete accordance with the crowns' recommendations. In other words, it is essential to address to what extent the crown counsel's recommendations affect judges' decisions.

Relating to this issue of recommendations is the further need to examine how and to what extent defense and the crown counsel may tailor their recommendations to suit the attitudes of each judge. No doubt there will be variations among judges in their reactions to certain crimes that could effect the decision making process. Nonetheless all these factors should be examined in order to achieve a better understanding of the processes that shape pretrial release decisions.

Finally, the effects of the heavy workload of the court and the strains which it engenders should be explained. The assembly-line processing of defendants is in large part a consequence of the system attempting to cope with this staggering workload. A court with high case volume necessarily requires high speed production of justice. Defendants who find themselves in a system pressed with a crushing workload are often shuffled through as quickly as possible. Thus the adversarial system of justice may be compromised, because no one has time to engage in it. The court's inability to make careful assessments of defendants' backgrounds may result in arbitrary release decisions being set. The connection between heavy workloads and perfunctory processing requires future research. A possible step in the direction of examining the relationship between heavy caseload pressure and release decisions is a comparison between two lower courts; a high volume caseload court and a low volume one. In the context of this province, perhaps a good comparison would be between a lower-court in Winnipeg with one in the City of Brandon or Selkirk. However, indicators need to be developed to assure comparability between the two lower courts before a study of this nature can proceed. Future research dealing with the issue of the effects of caseload on pretrial decisions should take this into account.

In conclusion, more issues that need to be addressed have been raised than have been resolved in this study. To this

extent, this research should be considered as exploratory and descriptive. Its primary task was essentially aimed at fine-tuning the administration of bail practices in the legal system. As Nagel recently pointed out, one of the implications of research of this nature is "the presumption that societal responses to deviants, court responses to defendants, or judicial decisions can be explained by one overarching theoretical model is likely to prove untenable" (1983:511-512).

Finally, the usefulness of the conflict perspective in explaining judicial decisions in this instance appeared to be weak. A probable reason for the weak explanatory power of the conflict theory could be its limited applicability in this stage of the judicial process. There may exist a built-in bias in the criminal processing system at the point of initial contact between the offender and the police, that is, at the stage where arrest and charges are made. Discriminatory and discretionary practices by the law enforcers could have filtered out most of the offenders against whom discrimination was not practised. Hence, by the time offenders are processed further into the criminal justice system, discrimination had already occurred. Those that appeared in arraignment hearings may in reality represent the majority of the discriminated offenders with those not discriminated being already filtered out of the system. To this extent, discriminatory practices at the pre-trial stage

are minimal. This explanation is plausible as the present study provides evidence that a good portion of offenders are either from the lower-class or from the minority racial groups.

Another viable explanation for the weak explanatory power of the conflict model in this stage of the judicial process may be attributed to the judiciary system's attempts to adapt to problems confronted by the detention centres and jails. Changes in pretrial policies would not have occurred if the detention centres and jails could readily hold the influx of additional prisoners. As long as the inflow and outflow of jail prisoners are balanced the necesity to alter court pretrial policies wwould not have emerged. In the event the detention centres become overcrowed the courts may begin to reevaluate pretrial policies. Although, more recent information pertaining to prisoners was not available, from 1981 to 1982, the remand centre at the Public Safety Building went beyond its capacity to accomodate remanded prisoners (John Howard Society et al., 1982:48-78). At this point, the court faced a number of options to resolve this problem. Measures such as cutting courtroom delay, that is the acceleration of the court's pretrial disposition procedures, could be adopted rather than liberalizing bail policies. The rationale against liberalizing bail policies is based on the assumption that it is the responsibility of the court (secondary ground) to protect the community from crim-

inals. Therefore, the courts would be hesitant to increase the use of recognizance to siphon off the flow of defendants from the overcrowded detention centres.

If these efforts to accelerate court's pretrial dispositions failed, the court must consider reducing its customary stringent bail policies by increasing the use of less stringent measures of release. Release on own recognizance and undertaking are more efficient solutions to overcrowding than the other bail options. This is because some defendants inevitably will fail to make even the most meagre money bail for release (Flemming et al., 1978). If overcrowding is seen as less important than the crime problem, then the court will continue to follow its existing bail practices. The Bail Reform Act of 1972 could be seen as an opportunity for the courts to alleviate jail population and the horrendous costs of keeping prisoners in jail. Similarly, the lack of discriminatory practices in view of the high percentage of offenders released on the least stringent bail options could be seen as an attempt by the courts in Winnipeg to mitigate overcrowed dockets and the continuing overcrowding of the detention centres. At the moment, the above reasoning is mere conjecture for the lack of information pertaining to the remanded prison population. Nevertheless, it suggests an important avenue for future bail research.

In conclusion, in view of the foregoing explantions, the lack of significant relationship must not be interpreted as

a refutation of the conflict model. On the contrary, it simply emphasized the need for a more comprehensive study of pretrial release decisions employing increasingly sophisticated concepts and methods to obtain empirical knowledge concerning an exceedingly complex system.

Appendix A

SERIOUSNESS SCALE

Items in this scale are ordered in such a manner that the greater the magnitude of the rank, the less serious the offence.

1. The offender forcibly rapes a woman. Her neck is broken and she dies.
2. The offender stabs a person to death.
3. The offender robs a person at gunpoint. Victim struggles and is shot to death.
4. Offender forces a female to submit to sexual intercourse - inflicts physical injury by beating her with his fists.
5. The offender sells heroin.
6. The offender forces a female to submit to sexual intercourse. No physical injury is inflicted.
7. The offender, armed with a blunt instrument, robs a victim of $1000. Victim is wounded and requires hospitalization.
8. The offender possesses heroin.
9. The offender sells marijuana.
10. The offender kidnaps a person. $1000 ransom is paid but no physical harm is inflicted.

11. The offender robs a person of $1000 by physical force. Victim is hurt and requires treatment by physician but no further treatment required.
12. The offender robs a person of $1000 at gunpoint. Victim wounded and requires treatment by physician.
13. The offender robs a person of $5 at gunpoint. Victim shot - hospitalization.
14. The offender robs a person of $1000 at gunpoint. Victim shot - hospitalization.
15. The offender robs a person of $5 at gunpoint. Wounded - treatment by physician but no further treatment.
16. The offender wounds a person with a blunt instrument. Victim lives but hospitalization.
17. The offender wilfully makes false statements under oath during trial.
18. The offender wounds a person with a gun. Victim lives but hospitalization required.
19. The offender stabs the victim with a knife. Victim treated by physician but no further treatment required.
20. The offender, using physical force, robs a person of $1000. Victim hurt and hospitalized.
21. The offender fires a gun at the victim - minor wound that does not require treatment.
22. The offender, using physical force takes $5 from the victim - hurt and hospitalized.

23. The offender using physical force, takes $1000 from a victim - no physical harm.
24. The offender wounds the victim with a gun. Treatment is required on one occasion.
25. The offender stabs the victim with a knife - no medical treatment required.
26. The offender sets fire to a garage.
27. The offender drags a woman into an alley, tears her clothes but flees before she is physically or sexually attacked.
28. The offender, armed with a blunt instrument, takes $1000 from a victim - no harm.
29. The offender forces a person to submit to anal intercourse.
30. The offender, a brother has sexual intercourse with his sister.
31. The offender robs $5 from a person with a blunt instrument - wounded and requires treatment on one occasion.
32. The offender robs a person of $1000 at gunpoint. No harm.
33. The offender beats the victim with his fists. Victim lives but requires hospitalization.
34. The offender telephones the victim and threatens bodily harm.
35. The offender performs an illegal abortion.

36. The offender drives while impaired.
37. The offender threatens to harm the victim if he doesn't give him his money. Victim gives him $5 and is not harmed.
38. The offender administers heroin to himself.
39. The offender breaks into a residence and steals furniture worth $1000.
40. The offender breaks into a residence, forces open a cash box and takes $1000.
41. The offender break into a locked car, steals, damages and abandons it.
42. The offender steals, damages and abandons an unlocked car.
43. The offender, with a blunt instrument, robs a person of $1000 - victim is wounded and requires treatment on one occasion.
44. The offender while in a public building during office hours, breaks into a cash box and steals $1000.
45. The offender threatens to harm a victim if he doesn't give money. Victim hands over $1000 and is not harmed.
46. The offender robs a victim of $5 at gun-point - no harm.
47. The offender forces open the glove compartment of an unlocked auto and takes $1000.
48. The offender, using physical force, robs a person of $5 - person is hurt and requires treatment on one occasion.

49. The offender breaks into a school and takes equipment worth $1000.
50. The offender, with immoral intent, tries to entice a minor into his auto.
51. The offender embezzles $1000 from his employer.
52. The offender walks into a public museum and steals painting worth $1000.
53. The offender breaks into a department store, forces open a safe and steals $1000.
54. The offender breaks into a public recreation center, smashes a cash box open and steals $1000.
55. The offender with a blunt instrument robs a person of $5 - victim is wounded and requires hospitalization.
56. The offender, armed with a blunt instrument, robs a person of $5 - no harm.
57. The offender breaks into a department store and steals merchandise worth $1000.
58. The offender, while the owner of a small delicatessen is phoning, breaks into a cash register and steals $1000.
59. The offender defaces and breaks public statues with damages of $1000.
60. The offender beats a victim with his fists - victim is hurt but no medical treatment required.
61. The offender wounds a person with a blunt instrument - person is treated by a physician but no further treatment is required.

62. The offender exposes his genitals in public
63. The offender offers to submits to anal intercourse.
64. The offender, while being searched by police, is found in illegal possession of a gun.
65. The offender kills a person by reckless driving of an auto.
66. The offender trespasses in a railroad yard, tears loose $1000 worth of equipment and steals it.
67. The offender steals two diamond rings worth $1000 while the owner of small jewelry store is not looking.
68. The offender trespasses in a railroad yard and steals $1000 worth of tools.
69. The offender leaves the scene of an accident.
70. The offender breaks into a public recreation center, smashes open a cash box an steals $5.
71. The offender steals $1000 worth of merchandise from a department store.
72. The offender beats a person with his fists - person is treated by a physician but no further treatment is required.
73. The offender breaks into a display case in a large jewelry store and steals $1000 worth of merchandise.
74. The offender steals $1000 worth of merchandise from an unlocked auto.
75. The offender trespasses into a city motor pool lot and wrenches off $1000 worth of accessories from city cars.

76. The offender picks a person's pocket of $1000.
77. The offender trespasses on a city owned storage lot and steals equipment worth $1000.
78. The offender breaks into a residence, forces open a cash box and steals $5.
79. The offender wounds a victim with a blunt instrument - no treatment is required.
80. The offender runs a house where illegal gambling occurs.
81. The offender runs his hands over a female victim, then flees.
82. The offender signs someone else's name to a cheque and cashes.
83. The offender takes $5 from a person by force - no harm.
84. The offender breaks into a residence and steals $5.
85. The offender breaks into a department store, forces open the cash register and steals $5.
86. The offender has sexual intercourse with his step-daughter.
87. The offender knowingly passes a worthless cheque.
88. The offender impersonates a police officer.
89. The offender forces open a cash register in a department store and steals $5.
90. The offender shows pornographic movies to a minor.
91. The offender enters an unlocked car, forces open a glove compartment and steals personal belongings worth $5.

92. The offender snatches a handbag containing $5 from a person on the street.

93. The offender trespasses in a public owned building and rips fixtures from the wall worth $5.

94. The offender breaks into a department store and steals merchandise worth $5.

95. The offender trespasses on a city owned storage lot and carries off equipment worth $5.

96. The offender steals $5 worth of merchandise from the counter of a department store.

97. The offender breaks into a parking meter and steals $5 worth of nickels.

98. The offender breaks into a locked car and later abandons it undamaged.

99. The offender picks a person's pocket of $5.

100. The offender is a prostitute in a house of prostitution.

101. The offender, a prostitute, offers to have sexual intercourse with a customer.

102. The offender breaks into a locked car, steals it and returns it undamaged.

103. The offender has marijuana in his possession.

104. The offender steals and unlocked car and abandoned it undamaged.

105. The offender steals an unlocked car and returns it undamaged.

106. The offender is caught driving while his licence is suspended or while under the age of 16.

107. The offender breaks into a school and steals $5 worth of supplies.

108. The offender gets customers for a prostitute.

109. A juvenile is reported to police by his parents as an offender because they are unable to control him.

110. The offender embezzles $5 from his employer.

111. The offender illegally possesses a knife.

112. The offender runs a house where the unlawful sale of liquor occurs.

113. The offender smokes marijuana.

114. The offender illegally enters a backyard and steals a bike.

115. The offender throws rocks through windows.

116. Two males willingly have anal sex.

117. The offender trespasses in a railway yard and steals a lantern worth $5.

118. The offender knowingly buys stolen property from the person who stole it.

119. The offender steals a bike parked on the street. The offender runs a house of prostitution.

120. The offender trespasses in a railway yard, wrenches loose some fittings worth $5 and steals them.

121. The offender engages in a dice game in an alley.

122. A juvenile is found drunk on the street, thereby becoming an offender.

123. The offender turns a false fire alarm.

124. The offender prowls in the backyard of a private residence.

125. The offender steals a book from the public library worth $5.

126. The offender takes bets on numbers.

127. The offender is a customer in a house of prostitution.

128. A juvenile illegally possesses a bottle of wine and thereby becomes an offender.

129. The offender a married man has sexual intercourse with a woman not his wife. The offender is a customer in a house of illegal gambling.

130. The offender makes an obscene phone call.

131. The offender is found firing a rifle for which he has no permit.

132. A juvenile runs away from home and thereby becomes an offender.

133. The offender is a customer in a house where liquor is sold illegally.

134. A group continues to hang around a cornor after being told to disperse by a policeman and thereby become offenders.

135. The offender disturbs the neighbourhood with loud, noisy behaviour. The offender, a prostitute, has sexual intercourse with a customer.

136. The offender trespasses in a railyard.

137. The offender has no residence and no visible means of support and thereby becomes an offender.

138. The offender is intoxicated in public.

139. An unmarried couple willingly have sexual intercourse.

140. A juvenile plays hookey from school and thereby becomes an offender.

141. The offender, over 16 years of age, has intercourse with a female under 16 who willingly participates in the act.

Appendix B

CHARTER OF RIGHTS AND LIBERTIES

'CANADA BILL'

7. Everyone has the right to life, liberty and security of the persons and the right not to be deprived thereof accept in accordance with the principles of fundamental justice.

11. Any person charged with an offence has the right

(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time;

(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause.

Appendix C

PROVINCIAL COURT RECOGNIZANCE

Be it remembered that on this day the persons named in the following schedule came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several sums opposite their respective names, namely:

	Name	Address	Occupation	Amount
(1)	Accused			$_____
(2)	Surety 1.			$_____
(3)	Surety 2.			$_____

To be made and levied of their several goods and chattels, lands and tenements, respectively.

(4) Accused deposits in cash herewith _____ $_____
or other valuable security

(5) ( ) with the consent of the prosecutor.

(6) ( ) not ordinarily resident in the Province or within 100 miles.

The said cash, valuable security, goods and chattels, lands and tenements to be forfeited to the use of Her majesty the Queen if the accused fails in respect of any of the conditions hereafter ordered.

THE CONDITIONS of this recognizance are that the accused

appears before the presiding Justice in Courtroom "_____", Provincial Court,_____, Manitoba, on the_____day of_____198__, at_____(__.M.) to answer to the charge or charges preferred against him and attend court in order to be dealt with according to law, for that he, did unlawfully (set our brief description of offence(s).

OFFENCE	LOCATION	DATE

contrary to the provisions of the Statute in such case made and provided; and to be dealt with according to law and to comply with the following conditions,

If the accused complies with the above conditions the said recognizance is void, otherwise it stands in full force and effect.

TAKEN AND ACKNOWLEDGED before me

this_____day of_____198___,____ ACCUSED _____

at_____ Manitoba.

SURETY _____

Judge, Magistrate or Justice of the peace in and for the Province of Manitoba

Surety _____

Appendix D

PROVINCIAL COURT

'Undertaking given to a Justice or a Judge'

I,_____

of_____ Manitoba, understand that I have been charged that on or about the_____day of_____198__, at____ _____ , Manitoba, I did unlawfully (set out brief description of offence).

OFFENCE	LOCATION	DATE

In order that I may be released from custody, I undertake to attend Courtroom "_____", Provincial Court _____ _____ , Manitoba, at_____(___.M.) on the _____ _____ day of_____ ,198___, and attend_____ thereafter as required by the court in order to be dealt with according to law, and to

{ } Report at _____to_____

{ } Remain within _____

{ } Notify _____of any changes of address, employment or occupation.

{ } Abstain from communicating with _____except in accordance with the following conditions

_____

{ } Deposit passport _____

{ } _____

I understand that failure without lawful excuse to attend court in accordance with this undertaking is an offence under subsection 133(2) of the Criminal Code.
Subsection 133(2) and (3) of the Criminal Code state as follows:

(2) Every one who,

(a) being at large on his undertaking or recognizance given before a justice or judge, fails, without lawful excuse the proof of which lies upon him, to attend court in accordance with the undertaking or recognizance,
or

(b) having appeared before a court, justice or judge, fails, without lawful excuse, the proof of which lies upon him, to attend as thereafter required by the court, justice or judge, or to surrender himself in accordance with an order of the court, justice or judge, as the case may be, is guilty of an indictable offence and is liable to imprisonmen

for a term not exceeding two years or is guilty of an offenc punishable on summary conviction.

(3) Everyone who, being at large on his undertaking or recognizance govern to or entered into before a justice or a judge and being bound to comply with a condition of that undertaking or recognizance directed by a justice or a judge, fails, without lawful excuse, the proof of which lies upon him, to comply with that condition, is guilty of

(a) an indictable offence and is liable to imprisonment for two years,

OR

(b) and offence punishable on summary conviction.

UNDERTAKEN before me

this _____day_____of_____198____

at_____Manitoba.

_____ _____

Judge Signature of accused

Magistrate

Justice of the Peace

in and for the Province of Manitoba

Appendix E

JANUARY JUDGES COURT SCHEDULE 1986

Date	A. Court	B. Court	C. Court	D. Court
Monday				
Jan. 20th	K. Stefanson	C. Newcombe	A. Connor	F. Allen
Tuesday				
Jan. 21st	K. Stefanson	C. Newcombe	A. Connor	F. Allen
Wednesday				
Jan. 22nd	K. Stefanson	C. Newcombe	A. Connor	F. Allen
Thursday				
Jan. 23rd	K. Stefanson	C. Newcombe	A. Connor	F. Allen
Friday				
Jan. 24th	K. Stefanson	A. Allen	A. Connor	C. Newcombe
Monday				
Jan. 27th	K. Stefanson	C. Newcombe	A. Connor	R. Trudel
Tuesday				
Jan. 28th	K. Stefanson	C. Newcombe	A. Connor	R. Trudel
Wednesday				
Jan. 29th	K. Stefanson	C. Newcombe	A. Connor	R. Trudel

Thursday

Jan. 30th F. Allen C. Newcombe A. Connor K. Stefanson

Friday

Jan. 31st F. Allen C. Newcombe K. Stefanson R. Trudel

Circuit Court (Lundar)

Monday

Jan. 27th ----- F. Allen

Tuesday

Jan. 28th ----- F. Allen

Wednesday

Jan. 29th ----- F. Allen

Appendix F

LEGAL DEFINITIONS FOR THE RESEARCH

Arrest	To seize a person by authority of the law. Policemen can make arrests and private citizens may do so as well in certain circumstances.
Assault	1) To threaten to hurt someone. 2) To intentionally apply physical force to a person. The Criminal Code lists different types of assault. i) Common assault: to hurt someone, but not seriously. Mere touching could constitute as assault, eg. slapping. ii) Assault causing bodily harm: an attack on a person which causes any physical harm that requires medical attention. Sometimes it is called aggravated assault. iii) Assault with intent: is an attack on a person for the purpose of doing something further, eg.

	intent to commit an indictable offence.
Bail/Judicial Interim Release	Word used for release from jail: for setting a person free after having been arrested.
Bail bond	A written agreement guaranteeing a certain sum of money to the courts in return for the release of an accused.
Charge	A formal accusation by the police that a person had committed a crime.
Charter of Rights	A part of the Canadian Constitution which guarantees everyone who lives in Canada certain rights and freedom.
Contempt of Court	Any act which in law amounts to insulting the court. It can occur inside or outside the courtroom, eg. abusing the judge.

Counsel/defense attorney	The lawyer who is responsible for defending the person who is being proceeded against on the charge.
Disposition	Another word for sentence. How the judge finally deals with the case.
Docket	A numbered of list of accused persons that will be appearing in a particular court at a given time.
Onus	Responsibility/ burden
Recognizance	An obligation or pledge of money made by an accused to a court that he shall do or not do something.
Remand	To put over a case to a future date, usually one weak away.
Undertaking	A written, signed promise made by an accused person that he or she will appear in court on a certain day.

REFERENCES

Akers, Ronald L.
1979 "Theory and Ideology in Marxist Criminology," in Criminology, Vol. 16, No.4, p.527-544.

Ares C. E., A. Rankin, & H.J. Sturz,
1963 "The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Parole," in New York Law Review, Vol. 38:67.

Barton, P.E. & N.A. Peel
1983 Criminal Procedure in Practice: A Manual for the Defense of Cases in Provincial Court, 2nd ed. Butterworth, Toronto.

Beeley, Arthur L.
1966 The Bail System in Chicago, University of Chicago Press, Chicago.

Beirne, Piers.
1979 "Empiricism and the Critique of Marxism on Law and Crime," in Social Problems, Vol. 26, p.373-385

Berghe, Pierre L. Van Den
1963 "Dialectic and Functionalism: Toward a Theoretical Synthesis," in American Sociological Review, Vol. 28, No. 5. October, pp. 695-705.

Bernard J. Thomas
1983 The Consensus-Conflict Debate: Form and Content in Social Theories, Columbia University Press, New York.

Bernstein, Ilene N.; William R. Kelly and Patricia A. Doyle
1977a "Societal Reaction to Deviants: The Case of Criminal Defendants," in American Sociological Review, Volume 42, P.743-755

Bernstein, Ilene N.; Edward Kick; Jan T. Leung & Barbara Schultz
1977b "Charge Reduction: An Intermediary Stage in the Process of Labelling Criminal Defendants," in Social Forces, Volume 56 (December): 362-384

Bernstein, Ilene N.; J. Cardascia & C. E. Ross
1979 "Defendant's Sex and Criminal Court Decisions," in R. Alvarez et al., (eds), Discrimination in Organization, p. 329-354, San Francisco: Jossey-Bass.

Bievenue, Rita & A. H. Latif
1974 "Arrests, Disposition and Recidivism: A Comparison of Indians and Whites," in Canadian Journal of Criminology and Corrections, Vol. 16 (2) pg. 1-12.

Blalock, Hubert M. Jr.
1979 Social Statistics, McGraw-Hill Book Company, Toronto.

Blishen, Bernard R. and Hugh A. McRoberts
1976 "A Revised Socioeconomic Index for Occupations in Canada," in Canadian Review of Sociology and Anthropology, Vol. 13(1).

Bohn, Robert M.
1982 "Radical Criminology: An Explication," in Criminology February, p. 565-589

Bornstedt, G.W. & T.M. Carter
1971 "Robustness in Regression Analysis," in H.L. Costner (ed), Sociological Methodology, San Francisco:Josey-Bass

Brickey, Stephen and Elizabeth Comack
1986 The Social Basis of Law: Critical Readings in The Sociology of Law, Garamond Press, Toronto.

Chambliss, William J.
1976 "Functional & Conflict Theories of Crime," in W. Chambliss & Milton Mankoff eds., Whose Law, What Order?, Wiley New York, 1976.

Chambliss, William J. and Robert B. Seidman
1982 Law, Order & Power, Addison-Wesley Publishing Coy., Massachusetts 1982.

Chesney-Lind, Meda
1978 "Chivalry Reexamined: Women and The Criminal Justice System," in Lee H. Bowker (ed), Women, Crime and the Criminal Justice System, Lexington Books. D.C. Heath and Company.

Chiricos, Theodore G. and Gordon P. Waldo
1975 "An Empirical Assessment of a Conflict Proposition," in American Sociological Review, Vol. 40 (December): 753-772.

Clarke, Stevens H., Jean L. Freeman and Garry G. Koch
1976 The Effectiveness of Bail Systems: An Analysis of Failure to Appear in Court and Rearrest while on Bail, Institute of Government University of North Carolina at Chapel Hill, January.

Dahrendorf, Ralf
1958 "Out of Utopia: Toward a Reorientation of Sociological Analysis," in The American Journal of Sociology, Vol. 64, Sept. 1958, no.2, p.115-127.

Dahrendorf, Ralf
1958 "Toward a Theory of Social Conflict," in The Journal of Conflict Resolution, Vol. 10, (2) P. 170-183.

Dahrendorf, Ralf
1959 Class and Class Conflict in Industrial Society, Stanford University Press.

Durkheim, Emile
1933 The Division of Labour in Society, The Free Press, Collier Macmillan Publishers, London.

Ebbesen, Ebbe B. & Vladimir J. Konecni
1975 "Decision-Making and Information Integration in the Courts: The Setting of Bail," in Journal of Personality and Social Psychology, vol. 32, no. 5, 805-821.

Eva, Etzioni-halevy and Amitai Etzioni,
1973 Social Change: Sources, Patterns and Consequences, 2nd ed. Basic Book Inc., Publishers, New York.

Foote, Caleb
1959 "The Bail System & Equal Justice," in Federal Probation, P. 42-48.

Flemming, Roy B.; Carol Kohlfield and Thomas M. Uhlman
____ "The Limitations of Bail Reform: A Quasi-Experimental Analysis," Unpublished Paper.

Frazier, Charles E.; Wilbur E. Bocks & John C. Henretta
1980 "Pretrial Release and Bail Decisions: The Effects of Legal, Community and Personal Variables," in Criminology, Vol. 18 (2), August, p. 162:181

Friedland, Martin L.
1965 Detention Before Trial, University of Toronto Press.

Goldfarb, R.
1965 Ransom, New York: Harper and Row.

Gouldner Alwin W.
1970 Coming Crisis of Western Sociology, Basic Books Inc., New York.

Green, Edward
1961 Judicial Attitudes in Sentencing, London: Macmillan and Company Ltd.

Greenaway, William K. & Stephen L. Brickey
1978 Law & Social Control in Canada, Prentice-Hall of Canada Ltd., Scarborough, Ont.

Gurvitch, Georges
1973 Sociology of Law, Routledge and Kegan Paul, London.

Hagan, John
1974a Criminal Justice in a Canadian Province: A Study of the Sentencing Process, Edmonton: University of Alberta. A doctoral thesis prepared for the department of sociology, University of Alberta.

Hagan, John
1974b "Extra-legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint," in Law and Society Review, Vol. 8 P.357-383, Spring.

Hagan, John
1977a "Criminal Justice in Rural and Urban Communities: A Study of the Bureaucratization of Justice," in Social Forces, Vol. 55, 597-612.

Hagan, John
1977b "Finding Discrimination: A Question of Meaning," in Ethnicity, Vol. 4:177-187.

Hagan, John; Nagel, I. & C. Allnetti
1980 "The deferential Sentencing of White-Collar offenders in Ten Federal District Courts," in American Sociological Review, Vol. 45:842

Hagan, John
1985 Modern Criminology: Crime, Criminal, Behaviour, and Its Control, McGraw-Hill Book Company, Toronto.

Hann, Robert G.
1973 Decision-Making in the Canadian Criminal Court System: A System Analysis, Vol. 1 & 2, Centre of Criminology, U of Toronto.

Holland, T.R. and N.S. Johnson
1979 "Offenders Ethnicity and Presentence Decision-making: A Multivariate Analysis," in Journal of Criminal Justice and Behaviour, Vol. 3: 237-238.

Horowitz, Irving L
1962/67"Consensus, Conflict and Cooperation," in Nicholas Demerath and Richard Peterson (ed)., System, Change and Conflict, New York Free Press, p.265-279.

Hunt, Allan
1978 The Sociological Movement in Law, The Macmillan Press Ltd.

Inverarity, J.M. & P. Lauderdale & Barry C. Feld
1983 Law and Society: Sociological Perspectives on Criminal Law, Little Brown & Coy., Boston.

Jankovic, Ivan
1978/79"Social Class and Criminal Sentencing," in Crime and Social Justice, Vol. 7-12: 9-16, Fall/Winter. Little Brown & Coy., Boston.

King, Michael
1981 The Framework of Criminal Justice, Croom Helm, London.

Kruttschmitt, Candace
1984 "Sex and Criminal Court Dispositions: The Unresolved Controversy," in Journal of Research in Crime and Delinquency, Vol. 21, (3) August p.213-232.

Kuhn, Thomas S.
1962 The Structure of Scientific Revolutions, Chicago Press Ltd., Chicago.

Lemert, Edwin M. & Judy Rosberg
1948 "The Administration of Justice to Minority Groups in Los Angeles County," in Culture and Society, University of California Publication, Vol. 11, No. 1.

Martindale, Don
1960 The Nature and Types of Sociological Theory, Boston: Houghton Mifflin

Merton, Robert K. & Robert A. Nisbet
1966 Contemporary Social Problems, Harcourt, Brace & World Inc., New York.

McWilliams, Peter K.
1966/67"The Law of Bail," in Criminal Law Quarterly, Vol. 9, P. 21-36, 145-165.

Morris, Ruth
1981 "Toronto Bail Program," in International Journal of Offender Therapy and Comparative Criminology, Vol. 25 No. 2.

Morris, Ruth
1984 Are we Serving the Target Group: An Evaluative Study of the 'Widening the Net' issue a Prison Alternative. Unpublished, York University.

Nagel, Stuart
1969 The Legal Process for A Behavioural Perspective, Illinois: The Dorsey Press.

Nagel, Ilene
1981 "Sex Differences in the Processing of Criminal Defendants", in Allison Morris and Lorraine Gelsthorpe, Women and Crime, Cropwood Series. No. 13, Cambridge

Nagel, Ilene H. & John Hagan
1982 "Gender and Crime: Offense Patterns and Criminal Court Sanctions," in Crime and Justice: An Annual Review of Research, Michael and Norval Morris (ed.) University of Chicago Press, p. 91-145.

Nagel, Ilene H. & John Hagan
1983 Federal Defendants in District Court: Criminal Process and Outcome Decisions, New York: Academic Press.

Nie, Norman H., Hadlai C., Jenkins G. Jean, Steinbremer Karin
1975 Statistical Package for the Social Sciences, 2nd ed. McGraw-Hill Book company, Toronto.

Parsons, Talcott
1966 Societies: Evolutionary and Comparative Perspectives, Englewood Cliffs: New Jersey, Prentice-Hall.

Partington, Donald
1965 "The Incidence of the Death Penalty for Rape in Virginia," in Washington and Lee Law Review, Vol. 23: 43-63.

Pope, Carl E.
1975 Sentencing of California Felony Offender, Washington, D.C. : Criminal Justice Research Center.

Pope, Carl E.
1979 "Postarrest Release Decisions: An Empirical Examination of Social and Legal Criteria," in Journal of Research in Crime and Delinquency January.

Quinney, Richard
1973 Critique of the Legal Order: Crime Control in Capitalist Society, Little, Brown & Coy., Boston.

Quinney, Richard
1974 Criminal Justice in America: A Critical Understanding, Boston: Little Brown Ltd.

Reason, Charles E. & R. M. Rich
1978 The Sociology of Law: A Conflict Perspective, Butterworth & Company Ltd.

Reid, Susan A.
1985 "The Reproduction of Women's Dependence as a Factor in Treating The Female Offender," in Canadian Criminology Forum, Vol. 7, Spring.

Ritzer, George
1983 Sociological Theory, Alfred A Knopf New York.

Roberts, B.
1983 "No Safe Place: The War Against Women," in Our Generation, Vol. 15:7-26.

Rottman, D.B. and Rita J. Simon
1975 "Women in the Courts," in Chitty Law Journal, Vol. 23:52

Rubington, Earl and Martin S. Weinberg,
1981, Deviance: The Interactionist Perspective, 4th ed., Macmillan Publishing Co., Inc. New York.

Salhany, Roger E.
1984 Canadian Criminal Procedure, 4th ed., Canadian Law Book Inc., Ontario.

Samuels, Gertrude
1962, "Bail: Justice for Far from All," The New York Times Magazine. August p. 13, 74-75.

Schur, Edwin M.
1968 Law & Society: A Sociological View, New York, Random House.

Sellin, Thorsten
1938 Culture, Conflict & Crime, Social Science Research Council, New York.

Skolnick, Jerome H.
1967 "Social Control and the Adversary System," in Journal of Conflict Resolution, Vol. 11: 53-70.

Small, Shirley J.
1978 "Canadian Narcotics Legislation, 1908-1923: A Conflict Model Interpretation," pp. 28-42, in Law and Social Control in Canada, Greenaway, W. K. & S. Brickey (editors), Prentice-Hall of Canada, Scarborough, Ontario.

Smart, Carol
1976 Women, Crime and Criminology: A Feminist Critique, London: Routledge and Kegan Paul

Stenning, Philip C.
1986 Appearing for the Crown: A Legal and Historical Review of Criminal Prosecutorial Authority in Canada, Brown Legal Publications Inc.

Swigert, V. L. & R. A. Farrell
1977 "Normal Homicides and the Law," in American Sociological Review, Vol. 42 (Feb.):16-32.

Taylor, Ian; Paul Walton & Jock Young
1975 Critical Criminology, London, Routledge & Kegan Paul Ltd.

Turk, Austin
1971 Criminality and the Legal Order, Rand McNally & Company, Chicago.

Thornberry, Terence P.
1973 "Race and Socioeconomic Status and Sentencing in the Juvenile Justice System," in Journal of Criminal Law and Criminology, Vol. 90 : 94-101.

Thornberry, Terence P.
1979 "Sentencing Disparities in the Juvenile Justice System," in Journal of Criminal Law and Criminology, Vol. 70(2): 164-171.

Tucker, Robert C.
1975 The Marx-Engels Readers, 2nd ed. W.W. Norton and Company, New York.

Turner, Jonathan H.
1982 The Structure of Sociological Theory, 3rd. ed. The Dorsey Press, Georgetown, Ontario.

Vold, George B.
1979 Theoretical Criminology, Oxford University Press, New York.

Wallace, Ruth & Alison Wolf
1980 Contemporary Sociological Theory, Prentice-Hall, Inc., Englewood Cliffs, N.J.

Wice, Paul B.
1974 Freedom for Sale: A National Study of Pretrial Release, Lexington Books, Toronto.

Wolfgang, Marvin E. and Marc Riedel
1973 "Race, Judicial Discretion and the Death Penalty," in Annals of the American Academy of Political And Social Sciences, Vol. 407(May) :119-133.

1982 The John Howard and Elizabeth Fry Society of Manitoba, Presumed Innocent? A Report of Pretrial Detention, March 31st.

1972 The John Howard Society of Saskatchewan, A study of Bail and Remand.

1969 Canada, Department of the Solicitor-General, Report of the Canadian Committee on Corrections, Toward Unity: Criminal Justice and Corrections, March 3rd.

1983 Martin's Annual Criminal Code, Aurora, Ontario, Canada Law Book Limited.

1983 Pocket Criminal Code and Miscellaneous Statutes, Agincourt, Ontario, The Carswell Company, Ltd.,