CJA **NEW YORK CITY CRIMINAL JUSTICE AGENCY**

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FACTORS INFLUENCING RELEASE AND BAIL DECISIONS IN NEW YORK CITY

PART 1. MANHATTAN

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FINAL REPORT

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Factors Influencing Release and Bail Decisions in New York City
Part 1. MANHATTAN

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PREFACE

This document is the first in a series of three research reports describing the results of a study of judicial release and bail decisions at Criminal Court arraignment in New York City undertaken by the Criminal Justice Agency (CJA). The research was done using observational methods in Manhattan and Brooklyn courtrooms from September 2002 through March 2003. Part 1 describes the findings in Manhattan; Part 2 describes the findings in Brooklyn; Part 3 presents borough comparisons and synthesizes the findings.

Draft reports were circulated for comment during 2003 and early 2004, and the reports were subsequently revised. Although all three revised reports are being released simultaneously, internal references reflect the order in which they were written and the drafts were circulated: Part 1 (May 2003); Part 2 (September 2003); Part 3 (January 2004).

Readers interested primarily in an overview of the study may wish to go directly to Part 3, the Cross-Borough Analysis. The first two reports contain fuller accounts of the data-collection procedures in each borough, detailed descriptions of the samples, and additional statistical models that are not included in the Cross-Borough Analysis. Because the reports were initially circulated at widely separated intervals, each report is written to stand alone. Consequently, sections containing introductory and explanatory material pertaining to the study as a whole are repeated in all three.

A brief summary of the study containing the highlights of the research findings and major conclusions will be the subject of a future issue in CJA's *Research Brief* series.

Mary T. Phillips, Ph.D.
Project Director
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Reports on the Study of Judicial Release and Bail Decisions:

- Factors Influencing Release and Bail Decisions in New York City,
  - Part 1. Manhattan
    Part 2. Brooklyn
    Part 3. Cross-Borough Analysis
- Release and Bail Decisions in New York City
  Research Brief No. 6 (forthcoming, August 2004)

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Thanks also to Wayne Nehwadowich for extracting case-level and arraignment data from the CJA database to supplement the data collected by observation.

Above all, we are grateful to the many judges who shared their knowledge and insights with us. We appreciate the assistance of Hon. Judith Harris Kluger, Administrative Judge for New York City at the time the research project was initiated; Hon. Martin Murphy, New York County Supervising Judge; and Hon. John Walsh, then Supervising Judge for Arraignments in New York City. In addition, we would like to thank the judges who facilitated our courtroom observations by allowing us to sit with them on the bench. Thanks are due especially to those members of the judiciary who read and commented on an earlier draft of this report. We cannot thank them by name, as the identities of individuals who participated in the study are confidential, but their willingness to answer questions and explain their decisions enriched the research immeasurably. Many other courtroom personnel also gave graciously of their time, and we thank them as well: assistant district attorneys, members of the defense bar, and court officers.

The methodology, findings, and conclusions of the study, as well as any errors, are the sole responsibility of the Project Director.

FACTORS INFLUENCING RELEASE AND BAIL DECISIONS IN NEW YORK CITY
PART 1. MANHATTAN

I. INTRODUCTION

The study was initiated by the New York City Criminal Justice Agency (CJA), under its contract with the Mayor's Office of the Criminal Justice Coordinator (OCJC), for the purpose of gaining a better understanding of release and bail decisions in New York City. The research design and methods were first tested in a pilot project to assess the feasibility and fruitfulness of collecting judicial decision-making data manually by observing arraignments in Manhattan courtrooms. For the pilot study, CJA researchers observed arraignments for several hours each week over a period of seven months in 2001 and 2002. A large amount of information, not available from any other source, was recorded during observation sessions. The results from the pilot project indicated that the observations could indeed yield useful data; in fact, some of the observation data showed considerable potential in explaining why defendants with similar criminal records who were facing similar charges did not always receive the same treatment in terms of release and bail-setting (Phillips, May 2002).

The current research is a direct outgrowth of the pilot project. The observations were extended to include Brooklyn as well as Manhattan so that borough comparisons could be made. The total number of arraignments observed was more than doubled, to 2,000. Improvements were made in data collection procedures to make coding of observations more systematic. Perhaps most important, the researchers sought (and were often granted) permission to sit next to the judge at the bench instead of in the audience as they had done during data collection for the pilot project. This greatly improved the audibility of the proceedings, and also provided opportunities for conversations with judges and other courtroom personnel.

This report presents the analysis of data from the observations in **Manhattan**.

A. CJA and the Release/Bail Decision

CJA is a not-for-profit corporation that provides a variety of criminal justice services to the City of New York through its OCJC contracts. One of these services is to interview arrestees held for Criminal Court arraignment in order to collect background information regarding their community ties. This information is the basis for a "point scale" recommendation system used by CJA staff to evaluate the likelihood that individual defendants, if released, would appear for subsequent court dates. The recommendation system is based on empirical research identifying objectively measured factors that are associated with failure to appear (FTA). The background information and the CJA release recommendation are provided to the courts at arraignment for the purpose of assisting judges in deciding whether to release a defendant on recognizance or to set bail.

The recommendation system for adults, first implemented in 1977, was recently revised following extensive research. The new adult point scale was implemented in June 2003. It is expected to recommend more defendants for ROR without an increase in the FTA rate, while

denying the recommendation to others because the risk of flight is deemed to be too high (Siddiqi, April 2004; June 2002; October 2000). Unlike the old system, the new one takes into account two criminal history items as well as community ties. One of the new items—whether the defendant has a history of prior bench warrants—contributes the greatest number of points to the new point scale. The other criminal history item is whether the defendant is awaiting disposition on an open case. Community ties also continue to be important elements in the new adult recommendation system.

Research showed that factors associated with failure to appear for juveniles were not the same as for adults, so in 1996 CJA developed a separate system for youths under age 16 who are prosecuted in the adult criminal court for certain felony offenses under New York's Juvenile Offender Law (Phillips, March 2000; August 1999). The JO recommendation system, which takes into account school attendance and whether the juvenile expects someone to come to court for the arraignment, is still in use.

The CJA recommendation performs an advisory function, providing the courts with information about factors that are objectively linked to failure to appear. Because judges must take other factors into consideration as well, it was never expected that the CJA recommendation would always be followed. In fact, prior to implementation of the new adult system, there was considerable divergence. During the first six months of 2003, only 65 percent of adult defendants who were given CJA's highest release recommendation (and whose cases continued past arraignment) were actually released on recognizance (CJA 2004). Furthermore, during the same period a majority (54%) of adults who were not recommended by CJA because of weak community ties were nevertheless released on recognizance. Thus, while the CJA recommendation may have exerted some influence, it did not go very far in explaining the decisions.

It is too early to know if the relationship between release decisions and the CJA recommendation has been affected by the recent changes made to the recommendation system. The old recommendation system was still in use during the entire data-collection period for this study. If a history of prior bench warrants and the existence of open cases are already important factors in judges' decisions, then it is possible that the courts will be guided more by the CJA recommendation once those factors are included in the point scale. That could translate into a higher correspondence between the CJA recommendation and the ROR decision in the future.

Judges in New York have the option of releasing a defendant outright, setting bail in any amount, or, in restricted circumstances, remanding without bail (there is no supervised release option at the present time in New York). When setting bail, the judge also decides on the form in which it must be posted, as a bond or in cash. The court's decision on release or bail at arraignment is a crucial decision for a defendant facing prosecution. Not only does this decision determine whether an accused person stays in jail or is released after his or her first court appearance; the decision also is strongly related to the outcome of the case, with detained defendants being more likely to be convicted.

New York State law defines certain parameters within which judges exercise considerable discretion in making release and bail decisions. Under the present law (§530.20 of the New York Criminal Procedure Law), a judge must set bail or release on recognizance (ROR) in cases where the charge is a misdemeanor or lesser offense and in most cases where the charge is a felony, but may deny bail in certain felony cases. In exercising his or her discretion, a judge

must consider a number of factors related to securing a defendant's future appearance in court. The safety of the community is currently not one of the factors that may be considered in New York, where objections to "preventive detention" have historically prevailed. However, the imposition of supervisory conditions on release on the basis of public safety is commonplace elsewhere in the country. Indeed, even the denial of release on this basis is permissible in many jurisdictions and has been upheld by the U.S. Supreme Court.

The factors that judges "must, on the basis of available information, consider and take into account" (CPL §510.30) include the defendant's character, reputation, habits and mental condition; his employment and financial resources; his family ties and the length of residence if any in the community; his criminal record if any; his record of previous adjudication as a juvenile delinquent; his previous record if any in responding to court appearances when required; the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; and the sentence which may be imposed upon conviction.

The courts are hampered by lack of reliable information on some of these points, particularly the defendant's character and mental condition. Furthermore, the statute does not address the relative weight to be assigned to the various factors. Most important, the law does not provide any practical guidelines as to which defendants should be released or the amount of bail that should be set, given any specific set of circumstances. The CJA interview provides information on employment, family ties and the length of residence in the community along with a recommendation as to ROR, but it does not—nor was it intended to—offer any recommendation as to appropriate bail amounts for defendants not released on recognizance.

Thus, Criminal Court judges in New York City are left largely on their own in deciding whether to release a defendant outright, and they have even less guidance in setting bail amounts. The topics are covered briefly in orientation sessions given to all newcomers to the bench, but many judges we talked to in the course of this research indicated that their real training lay elsewhere, usually in prior courtroom experience as prosecutors or defense attorneys. Under these conditions, a lack of consistency in decision making would be expected.

B. Review of Prior Research

Work done by John S. Goldkamp, Michael R. Gottfredson and their colleagues, much of it completed in the 1970s and 1980s, constitutes the most extensive research to date on release and bail decisions in the United States (Goldkamp 1979; 1984; 1985; 1987; Goldkamp and Gottfredson 1985; 1979; Goldkamp *et al*. 1995; Gottfredson and Gottfredson 1988; Jones and Goldkamp 1991). Large-scale projects to establish systems of voluntary bail guidelines in Philadelphia, Boston, Miami, and Phoenix were undertaken in an effort to reduce the use of cash bail and to make bail decisions more visible and more equitable. At each site, the researchers interviewed judges, collected data and developed statistical models of bail decisions. The analyses were then used to construct guidelines reflecting the same factors shown by the models to be already influential in the judges' decisions. Through the guidelines projects and other research, these scholars have contributed the bulk of what we know about bail decisions in this country over the past thirty years.

Statistical models of ROR and bail amount in Philadelphia left more than half of the variance unexplained, leading the researchers to conclude that decisions were not being made systematically, and thus not equitably — a situation that improved after implementation of guidelines (Goldkamp and Gottfredson, 1979). Subsequently, Goldkamp also found judicial decisions in Boston, Miami, and Phoenix, prior to the establishment of guidelines, to be uneven and random in nature (Goldkamp *et al.* 1995). A lack of fairness in judicial bail decisions, stemming from disparities in the treatment of similarly situated defendants, is a major theme in this body of work. Goldkamp concluded one discussion of the state of bail decisions in the early 1980s with the statement, "Judicial bail practices have suffered because judges have conducted bail in a low-visibility, highly improvisational fashion with little meaningful guidance . . . What the Supreme Court has referred to as 'experienced prediction' in bail practice often amounts to guessing conducted in a vacuum" (Goldkamp 1985, p. 55; see also Goldkamp 1993).

At least one group of researchers has disputed this characterization. While acknowledging that numerous previous studies, including Goldkamp's, had found "undisciplined discretion and caprice" in bail decisions, Barnes and colleagues maintained that their own results argued against this view, at least for the federal district in California that they studied. Most relevant to the current research is their finding that the strongest predictor of the bail decision was the Government's recommendation (Barnes *et al.* 1989, p. 262).

A few other studies have also examined the effects of the prosecutor's recommendation, with mixed results. Goldkamp included it in the variables he analyzed, and found that the prosecutor played a dominant role in Boston, which had no pretrial services, but not in the other three cities, all of which did have pretrial services though not necessarily provided by an independent agency (Goldkamp *et al*. 1995). In conjunction with the Vera Institute's Manhattan Bail Project, Suffet (1966) recorded prosecutors' and defense attorneys' recommendations in New York City and analyzed interactions among judges and attorneys. Suffet concluded that "the defense attorney is the least influential member of the bail-setting triad," and that when there was disagreement, the prosecutor usually prevailed (p. 318). In contrast to what was observed in the course of the present research, Suffet reported that about half of the time, the judge "simply fix[ed] bail without discussing the matter with either of the attorneys" (p. 323). The focus on courtroom interactions in this study provides an interesting glimpse at the ways in which some things have changed in the past 40 years (the judges we observed nearly always

asked both the prosecutor and the defense attorney for bail recommendations), while other things have stayed the same (the relative influence of the defense and prosecution).

Another early study found that when actual decisions were examined, bail was almost exclusively based on prosecutors' recommendations, but when presented with hypothetical cases, judges were strongly influenced by defendants' ties to the community (Ebbson and Konecni 1975, cited in Frazier *et al.* 1980). Frazier noted that attorney recommendations might explain some part of the large proportion left unexplained in statistical models from his own research on bail decisions in a southeastern state. Observers for that research had not recorded attorney recommendations, but they thought the defense attorney rather than the prosecutor had greater influence (Frazier 1980, p. 179). This was the only study we found that suggested a stronger influence for defense attorneys than for prosecutors.

Outside the United States, prosecutors' recommendations have recently been found to be important in bail decisions in Canada (Varma 2002) and in England and Wales (Dhami 2002). In the Canadian research the prosecutor's recommendation was of overwhelming importance in Youth Court cases. The British study was a mail survey asking judges to decide hypothetical cases; the recommendations of prosecutor and defense attorney ranked third and fourth respectively, behind charge severity and criminal history but above other variables, including community ties.

Complicating any comparison of results from prior research is the large variety of ways in which the bail decision has been conceptualized. Many studies (including the present one) have followed Goldkamp's lead in treating the ROR decision separately from the bail amount, and they have usually found differences in the factors that influenced each (for example, Albonetti 1989; Bock and Frazier 1984; Frazier *et al*. 1980; Nagel 1983; Roth and Wice 1978). For various theoretical and practical reasons, some have been interested only in the ROR decision (Bynum 1982; Daly 1989; Kruttschnitt 1984; Kruttschnitt and Green 1984; Maxwell 1999; Maxwell and Davis 1999; Steury and Frank 1990). Others have elected to treat ROR and bail as a unitary decision, using a single continuous dependent variable to represent ROR and ranges of bail amounts (Bock and Frazier 1977), or to represent various combinations of different forms of bonds and other conditions coded from less to more restrictive (Barnes *et al*. 1989; Dhami 2002; Fleming *et al*. 1980; Stryker *et al*. 1983). A few researchers have extended the conceptualization to include a third step: whether to set a cash alternative for defendants for whom bail is ordered (Nagel 1983; Sviridoff 1986).

This and other methodological variations in prior research make it difficult to summarize the findings, but some generalizations can be made. In a criminal justice text, Don Gottfredson (1999) observes that "Over and over again, studies have shown that the seriousness of the charge and the prior criminal record of the defendant are the main factors that influence the bail decision" (p. 222). This was true in most, though not all, of the sites included in the Goldkamp guidelines research. Other examples from past decades include research in Florida (Bock and Frazier 1977, 1984) and in Washington DC (Albonetti 1989; Albonetti *et al.* 1989). In a study of federal judicial districts across the country, Stryker *et al*. (1983) reported that offense (including type of offense and severity) constituted the most important single category of variable, although non-legal factors were also significant. The primacy of the nature of the offense and the defendant's criminal history in bail decisions and detention outcomes was recently reaffirmed in research based on data from the 75 most populous counties in the U.S. (Demuth 2003).

In New York City, similar results have been obtained from the 1960s through the 1990s. In the Vera study, charge severity was found to have the strongest influence on both ROR and bail amount in Manhattan, with criminal record also affecting both aspects of the decision (Suffet 1966). (Suffet did not control for effects of the prosecutor's request, which he analyzed separately). For a sample of cases arraigned in 1974 and 1975, Nagel concluded that charge severity was important for both the ROR decision and for bail amount, but much more so for bail amount (Nagel 1983). The Nagel study examined one (unidentified) borough of New York City.

Two CJA studies provided further evidence of the dominance of charge severity in release decisions in New York City in the 1980s and 1990s. The first was a study of New York City arraignment outcomes, including release decisions, using a sample of over 10,000 defendants arraigned in 1989 (Lee 1995). This research found that charge severity was the most important factor in ROR, citywide and in each borough, and criminal history was also important. The second study used a data set comprised of all Juvenile Offenders (JOs) arraigned within a 14-month period in 1996 and 1997 in New York City (Phillips 2000). In spite of the fact that every JO is by definition charged with a felony, the severity class of the offense was still a strong predictor of ROR. Juveniles charged with a C felony were much more likely to be released than those charged with A or B felonies. Criminal history was also among the more important factors affecting ROR for JOs. Neither of these studies analyzed factors affecting bail amounts.

Most recently, analyses of the ROR decision and bail amount for all cases arraigned in New York City during the first three months of 2001 were presented in the report on the pilot project that comprised the first phase of the present study. In every borough (except Staten Island, which was not included in the research) charge severity and the defendant's criminal history were strongly related to ROR. Charge severity also accounted for nearly all of the explained variance in bail amount, but the model explained a mere 14% of the variance, leaving most of that decision unexplained (Phillips 2002).

The influence of community ties was found to be spotty at best in all the studies we examined. The success of the Manhattan Bail Project in increasing ROR rates in New York City without increasing failure to appear led to the establishment throughout the country of pretrial services agencies with the function of providing information to judges on defendants' community ties (Goldkamp 1985; Clark and Henry 1997). However, as observed in one assessment of this trend, simply supplying judges with more reliable information about the backgrounds and community ties of defendants provided no guarantee that they would use it (Fleming *et al*. 1980, p. 973). Use of ROR did increase, but, in the words of Goldkamp and Gottfredson, "it is not clear that community ties ever became an important factor in judges' decisions" (Goldkamp and Gottfredson 1985, p. 22). Examples of studies that found little or no connection between community ties and either ROR or bail amount in jurisdictions around (and outside) the U.S. include those by Albonetti *et al*. (1989), Barnes *et al*. (1989), Bock and Frazier (1977), Bynum (1982), Dhami (2002), and Goldkamp and Gottfredson (1979).

On the other hand, some early researchers found the use of community ties in release and bail decisions to be relatively strong in New York City, where the community-ties measure was the CJA recommendation (or its precursor). Lazarsfeld (1974) found that the ROR rate was more than double, controlling for charge severity, when defendants were recommended by PTSA (the pretrial services agency that became CJA in 1977). The ROR rate for recommended defendants charged with an A or B felony was 19%, compared to 5% without a PTSA recommendation. Lazarsfeld concluded from this and similar findings for other levels of severity

that "judges to a considerable extent follow the advice of the agency" (p. 3). This raises intriguing questions of interpretation, as another analyst might focus instead on the large majority (81%) of serious felony offenders who were recommended for, but *not* granted, ROR.

Likewise, the author of a book surveying a wide range of pretrial release studies cited CJA data from 1978 showing that 58% of recommended defendants were ROR'd compared to 40% for those who were not recommended; this author concluded that "even though judges used additional information in the bail release decision, they rely heavily on the assessment of community ties." Here again, a different researcher might consider a change of 18 percentage points — representing the impact of the recommendation — to be small, especially when compared to the impact of charge severity. The author did offer the following qualification: "However, it should be noted that even in New York City the CJA recommendations are frequently disregarded by judges. This is still considered a problem by the agency." (Eskridge 1983, p. 86)

Community ties may have declined in importance after the passage of the Bail Reform Act of 1984, which allowed pretrial detention in federal courts for the first time on the basis of danger to the community. This was the conclusion of a study of federal cases in California that compared the periods immediately before and after the law went into effect (Barnes *et al*. 1989, p. 273). In the 1960s, the ROR recommendation was found to affect the bail decision in New York City, but not as much as charge and prior record (Suffet 1966). Just prior to the 1984 law Nagel found the CJA recommendation to be significant for ROR (and for the setting of a cash alternative), but not for bail amount (Nagel 1983). The CJA study of 1989 cases found a significant but weak association between the recommendation and ROR, leading the author to conclude that "a defendant's community ties were of little bearing" to the decision (Lee 1995, p. C2). Other than the CJA study of Juvenile Offenders (which also found community ties factors to be overshadowed by charge and criminal history) no further research has been done on the topic in New York City — or elsewhere within the United States, as far as we can determine — until now.

C. Research Questions

Given the knowledge that charge severity is important but is inadequate as a full explanation of judicial release and bail decisions, our objective was to discover other significant factors and analyze their relationships to each other and to release and bail-setting.

Specifically, this report addresses the following questions as they pertain to judicial decision making at arraignment in Criminal Court in Manhattan:

- What factors significantly influence ROR and bail-setting?
- Is one set of factors important in making a decision to ROR a defendant, while a different set of factors comes into play in setting the bail amount? That is, do different factors influence different aspects of the decision?
- Is the CJA recommendation, or any of its component factors, important in either aspect of the decision?
- Is there consistency among judges in decision making?

Another research question for the study was whether there are differences between Manhattan and Brooklyn in the way that ROR and bail-setting decisions are made, but that question is not addressed in this report. The Brooklyn findings are presented in Part 2, and borough comparisons in Part 3.

II. Methodology

A team of four researchers observed arraignment proceedings and collected data for a total of 1,000 cases in Manhattan during a six-month period that began in September 2002 and ended in March 2003. Data were collected only for cases that were continued past arraignment, as there was no release decision when a case was disposed at arraignment. Observation sessions usually lasted from one to three hours, and occurred on various days of the week and at various times of day. Both weekday and evening arraignment parts were included (APAR1, APAR2, APAR3, and APAR3A) so as to observe decisions by a wide range of judges regularly assigned to Criminal Court. The judges who rotate in the weekend parts and in the Thursday-Friday-Saturday late-night part in Manhattan are usually drawn from a pool of judges with regular assignments in another borough or in Supreme Court, and were not included in the study.

A. Data Collection Procedures

Upon entering a judge's courtroom for the first time, the CJA observer handed a prepared letter of introduction to a court officer and asked the officer to give it to the judge. The letter briefly described the research and asked the judge's permission for the observer to sit at the bench so as to facilitate hearing. If the request was granted, the observer joined the judge at the bench and returned there for subsequent observation sessions as long as the same judge continued to preside. Arraignment assignments rotated about every two weeks; when a new judge appeared, the process was repeated. (The letter to judges is included as Exhibit A.)

Occasionally a judge ignored the letter handed up by the court officer, or sent word back that the request would not be granted. There were a few judges who never allowed anyone to sit next to them at the bench; others refused permission because of special circumstances such as the presence of a law clerk or another observer, making the bench too crowded for an additional person. In these situations the judge would often allow the CJA observer to sit somewhere else in the well of the courtroom. If no such accommodation was made, the observer sat in the audience. When that happened, the court officers would usually allow the observer to sit in the front row of the audience, which is normally reserved for attorneys. As a result, our ability to hear the proceedings was generally good. Only 4 percent of cases were coded "poor" for ability to hear both defense attorney and prosecutor in Manhattan; nearly two-thirds (62%) were coded "good" for both attorneys.

Coding sheets were used for recording data during observations. On a cover sheet, the observer recorded information pertaining to the observation session as a whole (borough, date, time, judge, court part, and observer). A separate coding sheet was filled out for each case, with spaces to record case identifiers, the release decision, bail amount if bail was set, and other information about the defendant and the case. The main part of the coding sheet consisted of two columns: on the left, under the heading "ADA" (assistant district attorney), were listed arguments used by prosecutors in support of their bail requests; on the right were listed defense attorneys' arguments in support of their requests for ROR or lower bail. These lists were developed over the period of the pilot study and continued to be revised during the first month of data collection. Altogether, there were 33 distinct arguments coded for prosecutors and 44 for defense attorneys. They include virtually all of the arguments heard in court by project staff; they do not represent a complete catalog of arguments that could be made to justify bail or release.

The arguments were grouped on the coding sheet under category headings, such as "criminal history" as the category for an ADA argument that the defendant is a predicate felon. The observer placed a checkmark by every argument heard during arraignment proceedings for a particular case. If an attorney did not mention a specific argument, but referred to the general category, then the category heading was checked. An example would be an ADA who requested high bail "because of the defendant's criminal history" without saying what about the criminal history merited attention. When calculating the total number of cases for which "criminal history" was cited to support a prosecutor's bail request, we would include this case along with all the cases for which one or more specific criminal history items were checked. (The coding and cover sheets are included as Exhibit B.)

To facilitate its function of providing research, informational, and operational services to the City, CJA receives copies of daily court calendars for use in maintaining a database of virtually all adult arrests. These calendars were used to collect charge information for each case for which a coding sheet had been completed. The arraignment calendars were used for this purpose because the reading of the charges by the court officer was often unintelligible, and the readings tended to omit the Penal Law article numbers. The most severe arraignment charge could have been obtained from the CJA database, but the calendars had the advantage of providing the *two* most severe charges. Having more than one arraignment charge in our data file turned out to be analytically useful.

The calendars were also used to confirm release and bail outcomes recorded during the observation. The few discrepancies between the observation record and the information on the calendar were handled on a case-by-case basis. Knowing where the observer was seated and how he or she had rated the ability to hear aided in making a decision as to which source of information was more likely to be correct in a given case.

The next step in the preparation of the data file was to enter the information from the coding sheets and calendars into a case-based database.[1] Finally, docket numbers for the cases in the sample were linked to docket numbers for the same cases in the CJA database. Defendant and arrest variables were then drawn from the CJA database and added to the computer file.

[1] A defendant could have more than one case in the sample if he or she was arrested more than once in Manhattan during the study period.

B. Plan of Analysis

The ROR decision and the amount of bail set are analyzed separately in order to determine if different factors were important in these two aspects of the arraignment decision. In each of the analyses, bivariate relationships are presented first to examine differences in the dependent variable (ROR rate or bail amount) by charge severity and for individual judges. A multivariate analysis follows. Statistical models are presented first for the entire Manhattan sample, and then for two subsets of cases: misdemeanor cases and cases decided by Judge #2 (the judge with the greatest number of cases in the sample). The subsample analyses were done to reveal factors that might play a role only for a particular group. Additional subsets were modeled and are included in an appendix, but they are not presented in the text.

The statistical procedure used in all of the analyses is multivariate regression. The differing nature of the outcome variables requires that different types of regression procedures be used for the two aspects of the release or bail decision. For the ROR analysis, logistic regression was used as the method most appropriate when the dependent variable is a dichotomy (the defendant was either released on recognizance or not). For the bail amount analysis, Ordinary Least Squares (OLS) regression was used as the method most appropriate when the dependent variable is a continuous integer-level variable (the dollar amount of bail set).

Both regression procedures began with an examination of the bivariate correlations between the dependent variable and a large number of independent variables that included information from the CJA database about the case and the defendant as well as variables collected during the observations. Variables with a statistically significant bivariate correlation with the dependent variable were selected for testing in the multivariate analysis. When two independent variables were highly correlated with each other, the one with the highest correlation with the dependent variable was selected for testing in the regression model.[2] A complete list of independent variables tested in the analyses is included in Appendix A.

Among the variables listed in Appendix A are some "composite" arguments made by the prosecutor and the defense attorney. Variables labeled "composite" are those that were created by combining specific arguments into categories that correspond to the underlined headings on the coding sheet. For example, a case was coded "yes" on the ADA variable "composite criminal history argument" if any one (or more) of the specific criminal history items listed under the heading "Defendant's criminal history" was checked, or if the ADA simply mentioned the defendant's criminal history without being more specific. Both the composite variables and the individual arguments were tested in the bivariate and multivariate analyses.

[2] When variables are too highly correlated with each other, entering them together in the same regression procedure introduces distortion in the results, a recognized problem in statistics which is known as multicollinearity. A correlation of .4 or higher was used in this research as the criterion for multicollinearity.

III. Description of the Manhattan Sample Cases

A. Case and Defendant Characteristics

Data collection was concluded in Manhattan when the goal of 1,000 cases was reached. Table 1 provides descriptive statistics for these cases and defendants. The table includes frequencies for variables from the CJA database, such as defendant demographics, prior criminal record, the CJA recommendation and its components, and arrest charges. It also includes information about the arraignment charges and the release/bail decision, entered manually from the court calendars. The final section of Table 1 (1-F) includes data collected during observations.

In terms of both demographics and criminal history, the defendants were very similar to the defendants whose cases were not disposed at arraignment in a large sample of defendants arrested in 2001, and also similar to the observation sample for the pilot study (both data sets are described in Phillips, May 2002). This is a reassuring indication that there was no bias in the current sample that might have resulted, for example, if we had done most observations on the same day of the week or at the same time of day or in the same court part. In fact, we made an effort to vary these factors as much as possible. Thus, we can be reasonably sure that the sample is representative of all cases that were not disposed at arraignment during the study period.

As shown in the first row of Table 1, there were only three Juvenile Offenders (under age 16) in the sample, making a separate analysis of JOs impossible. It is likely that judges have somewhat unique considerations in mind when deciding whether to release a JO, such as a parent's presence in court. With so few, however, we could not test this hypothesis. The average age of defendants in the sample was 32. Other demographic characteristics measured were gender (85% were male) and ethnicity (51% black; 35% Hispanic; 11% white).

Ten different criminal history variables were collected in the data file (Table 1 and 1-A). A large majority of defendants (70%) had been arrested before; a third had at least one prior felony conviction; more than a third had a history of bench warrants. However, the high level of prior involvement with the criminal justice system shown by these and other criminal record variables is not characteristic of all defendants. Those without a criminal record who were charged with a misdemeanor were likely to have had their cases disposed at arraignment, and were not included in the study.

The CJA recommendation[3] and information collected during the pre-arraignment interview are displayed in Table 1-A and 1-B. One out of five defendants had verified community ties (1-A), and another 32 percent had strong community ties that CJA could not verify (usually because no one could be reached at the contact number supplied by the defendant). About a quarter (27%) expected a family member or friend to attend the arraignment. Almost half (47%) reported that they were employed or in school or in a training program full time, and this information was verified for 11 percent (1-B).

Data pertaining to the offense are displayed on the next three pages of the table (1-C, 1-D, and 1-E). Fifty-seven percent had a felony-level arrest charge (1-C), but that proportion was reduced prior to arraignment to 49 percent with a felony charge (1-D). This, too, is affected by the fact that disposed cases were not included in the sample, since cases of lesser severity are

[3] The reader is reminded that the CJA recommendation system in use during the study period has since been revised.

more likely to be disposed at arraignment. A sample of all arraigned cases would have a smaller proportion of felonies. Drug cases comprised 29 percent of all top arraignment charges (1-E), consistent with recent patterns in New York City (CJA 2004). The most frequent top arraignment charge was sale of a controlled substance in the third degree, a B felony (PL 220.39).

Release outcomes and bail amounts are presented in 1-E and 1-F of Table 1. Sixty percent of the defendants were released on recognizance, a quarter of them with a temporary order of protection and a few with other kinds of conditions, such as a curfew or an order to attend school. Very few were remanded without bail (n=7). When bail was set, the median amount was $2,500, and over half of the bail amounts fell in a range between $501 and $3,500. These amounts were calculated by taking the lower of the bond amount or the cash alternative, if applicable; bail amounts set on multiple dockets in the same case were summed.[4]

Frequencies of observation variables are presented in the last part of Table 1 (1-F). These include a few items of information that were also available on court calendars and in the CJA computerized database, such as the form of bail set and issuance of a temporary order of protection (TOP). The calendars were used to confirm our observations for these items. Bail was usually set as a bond amount with no cash alternative (83% of cases with bail set were in this category; 1-F). When a cash alternative was set, most often it was at least half of the bond amount. Only 8 cases, or 2 percent of cases with bail set, had a true cash alternative that was less than 50 percent of the bond. Bail bondsmen normally require that a defendant put up 50 percent or less of the face amount of the bond, so cash bail is not truly an alternative to bond unless the cash amount is less than that. A TOP was ordered by the judge in 217 cases (two more than were recorded as being requested by the prosecutor), or about one in five cases. As previously noted, a TOP was ordered against 148 defendants who were released on recognizance (under the heading "Release Decision," 1-E). Thus, over two thirds of the orders of protection were issued against defendants who were released.

The remaining items of information collected by observation were a coded identifier for the judge, number of codefendants, defendant's demeanor, use of a translator for the defendant, and the defendant-victim relationship. Seventeen of the 20 judges who presided in the four weekday arraignment parts in Manhattan during the study period are represented in the data file. (The three missed judges rarely presided over arraignments; each of the three spent fewer than 10 days in arraignments during the 6-month period.) The number of sample cases for each judge ranged from 13 cases for Judge #16 to 147 for Judge #2. Sixteen percent of the cases involved codefendants who were arraigned together.[5] Two percent of defendants were coded as "disrespectful" on the basis of outbursts in court or other disruptive behavior. Eleven percent understood English poorly enough to require a translator (including sign language interpreters for deaf defendants). A victim was mentioned in court or on the arrest report in 546 cases, with an "intimate" relationship to the defendant noted 27 percent of the time, and a relationship of "stranger" 63 percent of the time. [*The text continues on page 21.*]

[4] Thirteen cases in which bail was set at one dollar were excluded from the calculation of mean and median because a one-dollar bail indicates that bail has been set (or the defendant was remanded) on another case.

[5] Cases with more than one defendant were not included in this tally if the codefendant was arraigned separately. Also, a codefendant whose case was disposed at arraignment would not be in the study, but the sample case would still be coded as having one codefendant.

Table 1

CASE AND DEFENDANT CHARACTERISTICS: Manhattan

CJA DATABASE VARIABLES		
Defendant Demographic Characteristics	**n**	**%**
Age		
13 – 15	3	<1%
16 – 18	87	9%
19 – 28	348	35%
29 – 38	286	29%
39 – 48	206	21%
49 – 58	53	5%
59+	17	2%
Total	1,000	100%
mean = 32		
median = 31		
Gender		
Male	850	85%
Female	150	15%
Total	1,000	100%
Ethnicity		
Black	478	51%
White	102	11%
Hispanic	336	35%
Other	42	4%
Total	958	100%
Prior Criminal Record		
First adult arrest?[6]		
Yes	280	30%
No	643	70%
Total	923	100%
Number of prior felony convictions		
0	621	66%
1	153	16%
2	62	7%
3	51	5%
4+	52	6%
Total	939	100%
Number of prior misdemeanor convictions		
0	594	63%
1	67	7%
2 – 3	88	9%
4 – 9	97	10%
10 – 19	45	5%
20 – 29	23	2%
30+	25	3%
Total	939	100%

(Table continues on following page)

[6] The CJA data element "First Arrest" is coded "Yes" if the defendant has no prior adult conviction and no open cases at the time of the instant arrest. However, a defendant with a "first arrest" according to these criteria may still have a prior Youthful Offender (YO) adjudication or a prior sealed case.

(Table continued from previous page)

Table 1-A

Prior Criminal Record (continued)		
Number of open cases		
0	635	68%
1	181	19%
2	70	7%
3	30	3%
4+	23	2%
Total	939	100%
Number of previous misdemeanor jail sentences		
0	684	74%
1	59	6%
2+	177	19%
Total	920	100%
Previous prison sentence?		
Yes	193	21%
No	733	79%
Total	926	100%
Number of previous bench warrants		
0	581	63%
1	103	11%
2+	235	26%
Total	919	100%
Previous YO status?		
Yes	87	9%
No	838	91%
Total	925	100%
Currently on parole from prison?		
Yes	57	6%
No	868	94%
Total	925	100%
Prior sex offense?		
Yes	5	1%
No	916	99%
Total	921	100%
CJA Release Recommendation[7]		
1 Recommended: Verified Community Ties	191	20%
2 Qualified: Unverified Community Ties	309	32%
3A Insufficient Community Ties	291	30%
3B Residence outside NYC area	64	7%
3C Conflicting residence information	6	1%
3D Interview incomplete	39	4%
4A Bench warrant attached to NYSID sheet	52	5%
4B No NYSID available	2	<1%
4C Bail-jumping charge	0	
4D For information only: murder charge	1	<1%
J5 JO (Juvenile offense): Recommended	2	<1%
J6 JO (Juvenile offense): Not recommended	1	<1%
Total	958	100%

(Table continues on following page)

[7] After the completion of data collection, these categories were replaced by a revised recommendation system in June, 2003.

(Table continued from previous page)

Table 1-B

CJA Release Recommendation (components)		
Telephone in residence?		
Yes (not verified)	413	45%
Yes (verified)	190	21%
No (not verified)	277	30%
No (verified)	12	1%
Conflicting responses (defendant and contact person)	21	2%
Total	913	100%
At current address 18 months or more?		
Yes (not verified)	464	51%
Yes (verified)	166	18%
No (not verified)	242	27%
No (verified)	25	3%
Conflicting responses (defendant and contact person)	16	2%
Total	913	100%
Defendant expects someone at arraignment?		
Yes	246	27%
No	664	73%
Total	910	100%
Defendant lives with a parent, spouse (including common-law), grandparent, or legal guardian?		
Yes (not verified)	333	37%
Yes (verified)	159	17%
No (not verified)	381	42%
No (verified)	33	4%
Conflicting responses (defendant and contact person)	6	1%
Total	912	100%
Employed, in school, or in a training program full time?		
Yes (not verified)	326	36%
Yes (verified)	101	11%
No (not verified)	383	42%
No (verified)	86	9%
Conflicting responses (defendant and contact person)	13	1%
Total	909	100%
New York City address (including Nassau, Suffolk, Westchester)?		
Yes (not verified)	593	65%
Yes (verified)	202	22%
No (not verified)	107	12%
No (verified)	6	1%
Conflicting responses (defendant and contact person)	6	1%
Total	914	100%
Defendant has a verified NYC area address and a verified response to at least one other item?		
Yes	201	22%
No	713	78%
Total	914	100%

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Table 1-C

Arrest charge(s)		
Number of arrest charges		
1	453	46%
2	314	32%
3	134	14%
4+	88	9%
Total	989	100%
Number of felony arrest charges		
0	425	43%
1	362	37%
2	102	10%
3	89	9%
4+	11	1%
Total	989	100%
Number of Violent Felony Offense (VFO) arrest charges		
0	835	84%
1	116	12%
2+	38	4%
Total	989	100%
Severity class of the most severe arrest charge		
A Felony	20	2%
B Felony	204	21%
C Felony	52	5%
D Felony	181	18%
E Felony	107	11%
(Total felony)	*(564)*	*(57%)*
A Misdemeanor	325	33%
B Misdemeanor	42	4%
Unclassified Misdemeanor	43	4%
Violation	3	<1%
Infraction	2	<1%
Non-felony, severity classification unknown	10	1%
(Total non-felony)	*(425)*	*(43%)*
Total	989	100%
Offense type of the most severe arrest charge		
Drug	293	30%
Harm to person	215	22%
Property crime	135	14%
Misconduct	82	8%
Harm to person and property	57	6%
Obstructing justice	47	5%
Vehicle & Traffic Law (VTL) offense	50	5%
Theft intangible	68	7%
Weapon	32	3%
Sex crime	2	<1%
Total	981	100%

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Table 1-D

Most severe arrest charge (10 most frequent charges)		
220.39 (B felony, sale of a controlled substance-3)	125	13%
120.00 (A misdemeanor, assault-3)	77	8%
120.05 (D felony, assault-2)	65	7%
140.15 (A misdemeanor, criminal trespass-2)	39	4%
VTL 511U (unclassified misdemeanor, agg. unlicensed operator-2)	37	4%
220.16 (B felony, possession of a controlled substance-3)	31	3%
155.25 (A misdemeanor, petit larceny)	31	3%
220.03 (A misdemeanor, possession of a controlled substance-7)	29	3%
221.10 (B misdemeanor, possession of marijuana-5)	27	3%
221.40 (A misdemeanor, possession of marijuana-4)	25	3%
All other charges	503	51%
Total	989	100%
ARRAIGNMENT CALENDAR VARIABLES		
Charges entering arraignment		
Number of charges on arraignment calendar		
1	377	38%
2	623	62%
Total	1000	100%
Number of felony charges on arraignment calendar		
0	511	51%
1	286	29%
2	203	20%
Total	1000	100%
Number of Violent Felony Offense (VFO) charges on arraignment calendar		
0	865	87%
1	93	9%
2	42	4%
Total	1000	100%
Severity class of the most severe charge entering arraignment		
A Felony	20	2%
B Felony	190	19%
C Felony	50	5%
D Felony	169	17%
E Felony	60	6%
Total felony	*(489)*	*(49%)*
A Misdemeanor	399	40%
B Misdemeanor	37	4%
Unclassified Misdemeanor	64	6%
Violation	4	<1%
Infraction	2	<1%
Total non-felony	*(506)*	*(51%)*
Unknown severity	5	1%
Total	1000	100%

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Table 1-E

Offense type of the most severe charge entering arraignment		
Drug	291	29%
Harm to person	214	21%
Property crime	133	13%
Misconduct	88	9%
Harm to person and property	56	6%
Obstructing justice	49	5%
Vehicle & Traffic Law (VTL) offense	52	5%
Theft intangible	69	7%
Weapon	25	3%
Sex crime	1	<1%
Other	22	2%
Total	1,000	100%
Most severe charge entering arraignment (10 most frequent)		
220.39 (B felony, sale of a controlled substance-3)	120	12%
120.00 (A misdemeanor, assault-3)	87	9%
120.05 (D felony, assault-2)	55	6%
140.15 (A misdemeanor, criminal trespass-2)	46	5%
220.03 (A misdemeanor, possession of a controlled substance-7)	38	4%
155.25 (A misdemeanor, petit larceny)	34	3%
220.16 (B felony, possession of a controlled substance-3)	30	3%
VTL 511.1 (Unclassified misdemeanor, agg. unlicensed operator-2)	28	3%
221.10 (B misdemeanor, possession of marijuana-5)	26	3%
221.40 (A misdemeanor, sale of marijuana-4)	23	2%
All other charges	513	51%
Total	1,000	100%
Release decision		
ROR	599	60%
ROR with condition:		
(TOP)	*(144*	*25%)*
(other condition)	*(7*	*1%)*
(both TOP and other condition)	*(4*	*1%)*
(Basis for percent = 599 ROR'd)		
Bail Set	392	39%
Remand	7	1%
Discrepancy between observation and calendar	2	<1%
Total	1,000	100%
Bail amount (bond amount, or cash amount if lower) (cases with bail set)		
one dollar	13	3%
Low ($150 – $500)	65	17%
Medium ($501 – $3500)	212	54%
High ($3501 – $10,000)	65	17%
Very High ($10,001 – $1,000,000)	38	10%
Total	393	100%
Mean bail amount set[8]	$8,370	
Median bail amount set[8]	$2,500	

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[8] Cases in which bail was set at one dollar were excluded from the calculation of mean and median bail amounts because a one-dollar bail indicates that bail has been set or the defendant remanded on another case.

(Table continued from previous page)

Table 1-F

OBSERVATION VARIABLES		
Form of bail set (cases for which bail was set >$1)		
Cash only	36	9%
Bond with no cash alternative (amount set as bond or cash)	314	83%
Bond with cash "alternative" (50% or more of bond amount)	22	6%
Bond with true cash alternative (< 50% of bond amount)	8	2%
Total	380	100%
Temporary order of protection		
Requested by prosecutor	215	22%
Ordered by judge	217	22%
Total	1,000	100%
Presiding Judge (listed by code number)		
J1	18	2%
J2	147	15%
J3	142	14%
J4	56	6%
J5	104	10%
J6	63	6%
J7	88	9%
J8	40	4%
J9	26	3%
J10	75	8%
J11	19	2%
J12	20	2%
J13	44	4%
J14	14	1%
J15	52	5%
J16	13	1%
J17	79	8%
Total	1,000	100%
Number of codefendants		
0	848	85%
1	99	10%
2	45	5%
3	8	1%
Total	1,000	100%
Defendant's demeanor		
Respectful	982	98%
Disrespectful	18	2%
Total	1,000	100%
Was a translator provided for the defendant at arraignment?		
Yes	113	11%
No	887	89%
Total	1,000	100%
When a victim was involved, the relationship with the defendant was characterized as:		
Intimate	146	27%
Acquaintance	53	10%
Stranger	345	63%
Disagreement as to the nature of the relationship	2	<1%
Total	546	100%

B. Attorney Requests and Arguments

Table 2 displays descriptive information about the statements made by prosecutors and defense attorneys as they filed notices, made (or responded to) offers, and presented their arguments to the judge for release or bail. The first page of the table displays this information for the prosecutor. Prosecutors filed a grand jury notice, thereby stating their intention of seeking a grand jury indictment, for most felony cases (90%) and for a few misdemeanor cases as well (2%). A sentence or plea-reduction offer was made in half of the non-felony cases, and in a handful of felony cases (3%). (Offers were made more frequently, but when the offer was accepted, thus disposing the case, it was discarded from the sample because no release decision was made. Thus the cases remaining in the sample were those in which no offer was made or an offer was refused.) The prosecutor consented to ROR in 21 percent of cases; requested bail in the amount of $500 or less in 11 percent of cases; and requested bail over $10,000 in 10 percent of cases. The median bail request was $3,250. In only 12 cases (1%) did the prosecutor request remand without bail. (In comparison, judges were more lenient: they ROR'd 60%, set bail at $500 or less for 17%, and the median amount they set was $2,500; shown in Table 1-E.)

In support of the bail request, prosecutors cited the defendant's criminal history more than any other factor (61% of the time), with warrant history being the most frequently mentioned specific aspect of criminal history (40%). The strength of the case was the next most frequent argument (this was mentioned in 52% of cases). The risk of flight was mentioned 38 percent of the time; this category includes cases in which the ADA pointed out that the defendant was not recommended for ROR by CJA (15%) and cases in which the ADA stated that the defendant had used an alias or given a incorrect birth date or Social Security number (14%). In over a quarter of the cases the prosecutor talked about the victim (27%), mentioning injuries 14 percent of the time. Arguments based on the presence of a weapon, the seriousness of the case, violence of the crime, or resisting arrest were each mentioned in 2 to 10 percent of cases. (Prosecutors normally mentioned a variety of factors in explaining their requests to the judge, so the percentages add up to more than 100%).

Corresponding information for the defense attorney is displayed in Table 2-A. The defense attorney filed a cross grand jury notice, indicating an intention to have the defendant testify at the grand jury hearing, in 46 percent of felony cases (this is about half as often as prosecutors filed grand jury notices for felony cases). Cross grand jury notices were filed in 2 percent of non-felony cases. In the relatively rare circumstance when a grand jury notice was filed for a misdemeanor, the defense was almost certain to file a cross grand jury notice. The number of cross grand jury notices filed in misdemeanor cases (11) is actually larger than the number of such cases in which the prosecutor filed a grand jury notice (9), probably because project observers occasionally missed hearing the prosecutor's statement of notice. The frequency with which the defense planned to have the defendant appear before the grand jury reflects the fact that New York is one of the few states in which the defendant has this right. Some experts consider this to be a tool for screening weak cases out of the criminal justice system. Once rarely used in New York City, it has been used with increasing frequency over the past decade.[9]

[9] William Glaberson, "New Trend Before Grand Juries: Meet the Accused," *New York Times*, June 20, 2004. Defendants actually testify less frequently than the defense attorneys' filings would imply: 5% of felony defendants in Manhattan testified at grand jury hearings during the first half of 2004, according to numbers attributed to the District Attorney's office in this article.

Table 2

ATTORNEY REQUESTS AND ARGUMENTS: Manhattan

Prosecutor variables		
Grand jury notice filed		
Non-felony cases: Yes	9	2%
No	502	98%
Total	511	100%
Felony cases: Yes	438	90%
No	51	10%
Total	489	100%
Plea offer made (by definition, these offers were rejected)		
Non-felony cases:		
No offer	252	49%
ADA made offer	257	50%
Judge made offer (and ADA did not)	2	<1%
Total	511	100%
Felony cases:		
No offer	474	97%
ADA made offer	14	3%
Judge made offer (and ADA did not)	1	<1%
Total	489	100%
Prosecution's bail request:		
Consent to ROR	210	21%
One dollar	1	<1%
Low bail amount ($500 or less)	113	11%
Medium bail amount ($501 – $3500)	265	27%
High bail amount ($3501 – $10,000)	245	25%
Very High bail amount ($10,001 – $1,000,000)	98	10%
Remand	12	1%
No bail request heard	55	6%
Requested bail, amount unknown	1	<1%
Total	1,000	100%
Mean bail amount requested (*N=726; includes 5 cases for which remand was also requested; excludes requests of $1)*	$12,545	
Median bail amount requested (*N=726; includes 5 cases for which remand was also requested; excludes requests of $1)*	$3,250	
Most frequent reasons for bail stated by ADAs (sums of percentages equal more than 100% because prosecutors may give more than one reason):	*The basis for percents is 728 cases for which a bail request was heard.*	
Defendant's criminal history	444	61%
(Prior or open warrants: subset of criminal history)	*(292*	*40%)*
(Predicate felon: subset of criminal history)	*(158*	*22%)*
(Open case: subset of criminal history)	*(93*	*13%)*
(On probation or parole: subset of criminal history)	*(92*	*13%)*
Strength of the case	377	52%
(Evidence found: subset of strength of the case)	*(186*	*26%)*
(Eyewitness: subset of strength of the case)	*(130*	*18%)*
(Incriminating statement: subset of strength of the case)	*(95*	*13%)*
Flight risk	276	38%
(No CJA recommendation: subset of flight risk)	*(111*	*15%)*
(Used alias, false DOB, or false SS #: subset of flight risk)	*(99*	*14%)*
Victim	193	27%
(Injury to victim: a subset of victim)	*(103*	*14%)*
Weapon	71	10%
Seriousness of the case	52	7%
Violence of the crime or defendant	18	3%
Resisting arrest	16	2%

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Table 2-A

Defense attorney variables		
Cross grand jury notice filed		
Non-felony cases: Yes	11	2%
No	500	98%
Total	511	100%
Felony cases: Yes	223	46%
No	266	54%
Total	489	100%
Defense attorney's release/bail request:		
No request heard	400	40%
*ROR	499	50%
One dollar	6	1%
"More reasonable bail amount"	83	8%
Specific amount requested	12	1%
(range from $200 to $5,000; median=$750)		
Total	1,000	100%
*Includes 42 cases for which the defense attorney requested ROR or bail.		
Most frequent reasons for release or low bail stated by defense attorneys (sums of percentages equal more than 100% because attorneys may mention more than one reason):	*The basis for each percentage is 600 cases in which a defense request was heard.*	
No flight risk	407	68%
(Employed, in school, or in program: subset of flight risk)	*(218*	*36%)*
(Community ties verified by attorney: subset of flight risk)	*(184*	*31%)*
(Someone in court for defendant: subset of flight risk)	*(95*	*16%)*
(CJA recommendation: subset of flight risk)	*(77*	*13%)*
(Family obligations: subset of flight risk)	*(49*	*8%)*
(Fulfilled obligations of probation/parole: subset of flight risk)	*(48*	*8%)*
Weakness of the case	334	56%
(Defendant denies charges: subset of weak case)	*(183*	*31%)*
(Lack of evidence: subset of weak case)	*(59*	*10%)*
(Defendant was overcharged: subset of weak case)	*(45*	*8%)*
(Procedural issues: subset of weak case)	*(30*	*5%)*
(Complaining witness was instigator: subset of weak case)	*(30*	*5%)*
Defendant's lack of criminal history	288	48%
("Clean" criminal record: subset of criminal history)	*(90*	*15%)*
(First arrest: subset of criminal history)	*(84*	*14%)*
(Prior convictions were not recent: subset of criminal history)	*(63*	*11%)*
(No bench warrants: subset of criminal history)	*(41*	*7%)*
(No prior felony conviction: subset of criminal history)	*(27*	*5%)*
Defendant's health	51	9%
Defendant unable to afford bail	44	7%
Victim	40	7%
(Defendant is victim: subset of victim)	*(26*	*4%)*
(Lack of injury to victim: subset of victim)	*(16*	*3%)*
Defendant not facing jail time	38	6%
Defendant cooperated with police	33	6%
Defendant not violent/dangerous	32	5%
Defendant has place to stay (apart from victim)	20	3%

Defense attorneys usually requested ROR when they said anything regarding bail, but no request was heard in 40 percent of cases. The large number of cases for which no request was heard from the defense reflects several things: (1) a request would have been superfluous if the ADA had already consented to ROR, which accounts for half of the cases for which no defense request was made (not shown); (2) judges sometimes granted ROR before the defense had a chance to request it, even in the absence of ADA consent; and (3) it was often difficult to hear defense attorneys, especially from the audience, because defense attorneys stood with their backs to the audience.

There was no way to distinguish between situations in which the defense attorney did not make a request and those in which the observer did not hear it. We estimate that for three-quarters of the cases coded "No request heard," a request was not made. For the remaining cases (under 100) the prosecutor did not consent to ROR *and* the observer's ability to hear the defense attorney was rated "poor." In those cases it is possible that a request was made that was inaudible to the CJA observer.

Defense arguments countering the prosecutor's bail request, shown at the bottom of Table 2-A, are tabulated only for the 600 cases in which a request for ROR or lower bail was heard. Although we did record some arguments in other cases, they are not included. Thus the percentages reflect the popularity of the various arguments among defense attorneys *who made a request for release or bail* — not among all cases. This was done because it would be misleading to include in the base the large number of cases in which the defense did not find it necessary to request ROR in order to obtain it.

Defense attorneys were mostly likely to emphasize the defendant's likelihood of appearing in court; 68 percent made this argument on the behalf of their clients. The most frequent specific reason given for the claim that a defendant did not pose a risk of flight was that the defendant was employed or in school or in a treatment program (36%). In addition, the defense attorney often reported that he or she had verified the defendant's community ties even in the absence of a positive CJA recommendation (31%). Weakness of the case was another argument used by defense attorneys much of the time (56% of cases). Arguments based on the defendant's record—lack of criminal history, lack of a bench warrant history in spite of previous arrests, passage of time since the last encounter with the criminal justice system, etc.—were made by the defense in 48 percent of cases.

Less often, defense attorneys expressed concerns about their clients' health (9%) or argued that the client could not afford bail (7%). Defense attorneys also sometimes sought to defuse sympathy for the victim, arguing that the victim was not injured, or that the injuries were trivial, or that the real victim was the defendant (7%). In a small number of cases the defense argued for release because the defendant was not facing any jail time (6%) or because he or she had cooperated with the police (6%). An explicit statement that the defendant was not violent or dangerous was made in 5 percent of cases. In domestic violence cases an issue of importance to judges was whether the defendant had a place to stay apart from the complaining witness, where he would be able to comply with an order of protection; the defense argued for release on the basis of an alternate place to stay in 3 percent of cases.

IV. Factors Affecting the ROR Decision in Manhattan

A. ROR Rates by Charge Severity and Judge

We begin by examining ROR rates by judge, separately for non-felony and felony cases. Any comparison among judges in ROR rates is meaningful only when a judge's rate for non-felony cases is compared to other judges' non-felony cases, and when a rate for felonies is compared to other felonies. As shown in Figure 1, ROR rates for non-felonies (blue bars) were almost invariably higher than for felonies (red bars) regardless of which judge was making the decision—exceptions being Judges #14 and #16. In fact, the ROR rate for non-felony cases overall was nearly twice that for felonies (pair of bars at far right). This makes it clear that charge severity was an important consideration.

Figure 1 also presents graphic evidence that judges released defendants at widely differing rates, even when charge severity was held constant. For example, Judge #16 had a very high ROR rate for both non-felony and felony cases, whereas Judge #11 had a low ROR rate for both severity levels.

Figure 1

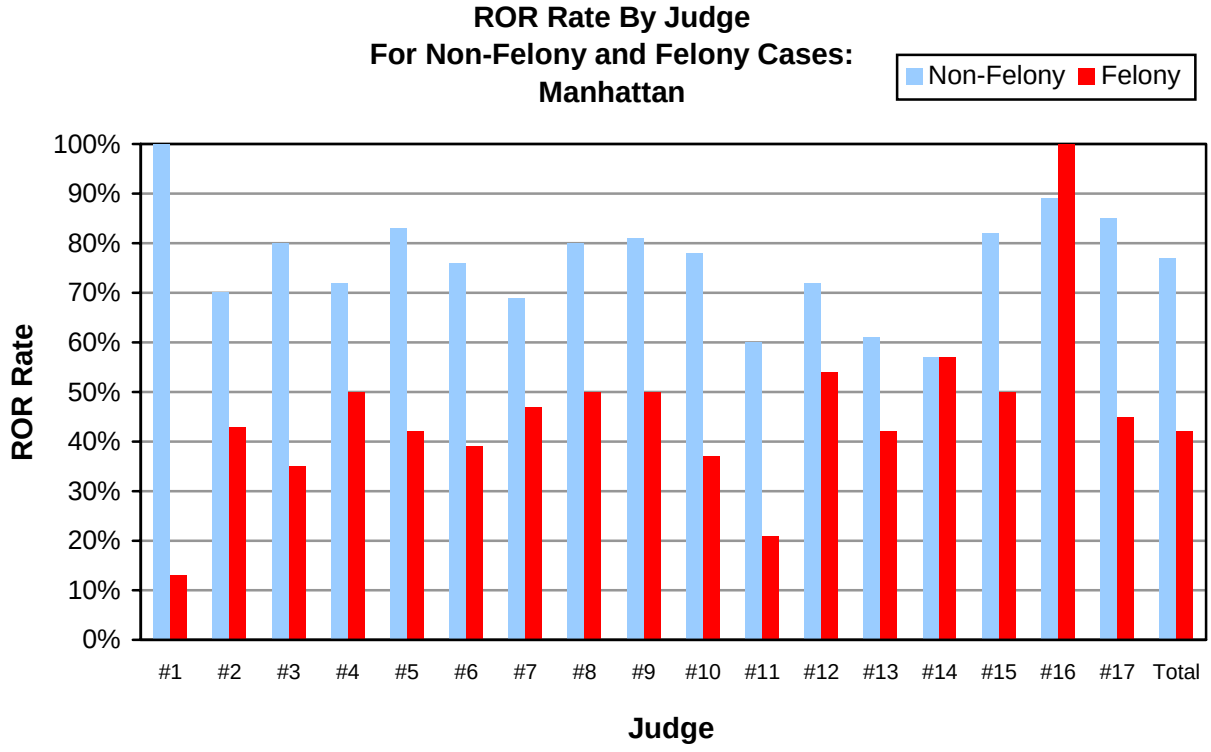

Table 3 presents the same information showing the exact percentages and the number of cases represented by each bar in Figure 1.

Table 3

ROR Rate By Judge For Non-Felony and Felony Cases: Manhattan

	ROR rate	
Judge	Non-Felony	Felony
#1	100% n= 10	13% n= 8
#2	70% n= 66	43% n= 81
#3	80% n= 65	35% n= 77
#4	72% n= 32	50% n= 24
#5	83% n= 42	42% n= 62
#6	78% n= 40	39% n= 23
#7	69% n= 54	47% n= 34
#8	80% n= 10	50% n= 30
#9	81% n= 16	50% n= 10
#10	78% n= 37	37% n= 38
#11	60% n= 5	21% n= 14
#12	72% n= 7	54% n= 13
#13	61% n= 18	42% n= 26
#14	57% n= 7	57% n= 7
#15	82% n= 34	50% n= 18
#16	89% n= 9	100% n= 4
#17	85% n= 59	45% n= 20
Totals	77% n= 511	42% n= 489

The figures in Table 3 reveal that the two judges who appeared to release felony defendants at a rate equal to or greater than non-felony defendants—#14 and #16—had fewer than 10 cases in both severity groups. ROR rates for these judges, and for others with fewer than 10 cases on which to base a percentage, are unreliable.

For non-felony cases, ROR rates for individual judges ranged from a low of 57 percent for Judge #14 to 100 percent for Judge #1. For felonies, the range in ROR rates was from 13 percent for Judge #1 to 100 percent for Judge #16. Some judges (#1, #12, and #14) had rates that were well below average for one severity level and well above average for the other. This was particularly striking for Judge #1, who released every non-felony defendant and yet had the lowest ROR rate for felonies (however, this was based on only 8 felony cases).

These bivariate results indicate that charge severity was important but did not explain differences among judges in ROR rates. There are many factors other than charge severity that affect ROR, which singly or together could explain why rates among judges were so different even within the same level of severity. A defendant's criminal history is one such factor; the strength of the case is another. The next step was to use a multivariate analysis to examine a large number of variables along with charge severity and judges' individual tendencies. In multivariate analyses, the effects of many variables on the dependent variable (ROR) can be evaluated simultaneously. If differences among judges are not significant factors in multivariate models, then we can conclude that all such variations are explained by differences in the defendants or the cases, rather than differences among the judges themselves.

B. Multivariate Analysis: Variables and Statistical Measures

Dependent and independent variables

The dependent variable in the ROR analysis was whether or not the defendant was granted ROR at arraignment in Criminal Court. The independent variables tested in the models included criminal history, demographic, and arrest variables from the CJA database; arraignment charge information from the court calendars; and data collected during observations.

In addition to the independent variables listed in Appendix A, some additional variables calculated from these data elements were tested in the analyses. They include:

- ROR Orientation—the judge's release orientation, or overall tendency to release a larger or smaller than average percentage of defendants facing charges of the same severity level. Each judge's ROR rate was compared to the overall average ROR rate for the same level of severity, separately for felony and non-felony cases, and categorized as *lenient* if the rate was more than 5 percentage points above average, *medium* if within 5 percentage points above or below the average, and *strict* if less than 5 percentage points below the average.
- Bail Orientation—the judge's bail orientation, or overall tendency to set bail higher or lower than average for defendants facing charges of the same severity level. The median bail amount set by each judge was compared to the overall median for the same level of severity, separately for felony and non-felony cases, and categorized as *low* if the median was at least 40 percent below the overall median, *medium* if within 39 percent above or below the overall median, and *high* if at least 40 percent above the overall median.

These measures of judicial orientation were constructed in an effort to refine the analysis of judicial variability that could be done merely by using dummy variables for individual judges as independent variables. The use of dummy variables—a technique in which a separate variable for each judge is computed—would indicate if each judge individually had a significant effect on the decision, over and above the effects of all the case and defendant variables. However, because it takes a powerful effect to achieve statistical significance in a small sample, only the judges with the most cases or who departed dramatically from the decisions of their colleagues were likely to appear as significant predictors in the statistical models. Grouping judges together based on a similar orientation creates a more sensitive measure of judicial variability because weaker effects could be detected with a larger number of cases in each group. (Details on the construction of judicial orientation variables, and tables showing how each judge was categorized, are given in Appendix B.)

A general measure of judicial orientation that attempted to summarize the separate orientation measures was also constructed, characterizing each judge's overall orientation as lenient, medium, or strict. However, it was not very successful. Judges who had high ROR rates were not necessarily those who tended to set low bail, and a tendency to be lenient or strict for non-felony cases did not necessarily carry over to felony cases. Thus the four discrete measures described above—for ROR and bail amount separately, each divided into a separate measure for non-felony and felony cases—were used in the analysis rather than the combined measure.

Statistical measures

The statistical measures presented in the logistic regression models include:

- Nagelkerke R^2: the proportion of variance in the outcome that is explained by the independent variables, ranging from 0 to 1 (100%). The independent variables were entered stepwise in groups of similar variables in order to examine the amount of variance explained by each set of factors separately. The R^2 after each step is the proportion of variance explained by all the variables entered up to that point (in that step and previous steps); the "change" is the *additional* proportion of variance explained by the variables in that step, above and beyond the explanatory power of previous steps. The proportion of variance explained by the model as a whole is given following the final step. The final R^2 is interpreted as a measure of the predictive power of the model.

- Standardized *beta* coefficient (β): a measure of the relative importance of each independent variable, controlling for all other variables in the model (including those entered in subsequent steps). The standardized *beta* varies from –1 to +1; values closer to 0 indicate a weak effect, and values closer to 1 indicate a strong effect. The sign (negative or positive) indicates the direction of the relationship.

- Statistical significance: a measure of the likelihood that the results are the product of chance alone. The level of significance is indicated by an asterisk (or asterisks) following the standardized *beta*. One asterisk, the lowest level of significance, indicates a probability of 5 percent that the result was produced by chance alone. Three asterisks, the highest level, indicate a probability of less than a tenth of one percent that the results occurred by chance alone.

- Odds ratio: a measure of the magnitude of the effect of the independent variable on the odds for ROR, controlling for all other variables in the model. An odds ratio greater than one indicates an increase in the likelihood of ROR; an odds ratio less than one indicates a decrease in the likelihood of ROR. If sex is coded 0=male and 1=female, an odds ratio of 2.0 would indicate that the odds for ROR are twice as great for females as for males. To simplify interpretation, odds ratios less than 1.0 are expressed inversely in the text (1 divided by the odds ratio). If the odds ratio for a prior bench warrant is .2, for example (coded 0=no, 1=yes), the odds **against** ROR are five times greater for those with a warrant history (1 divided by .2 = 5). (Both examples are hypothetical and do not represent the results of this study.)

C. Logistic Regression Model of the ROR Decision in Manhattan

Table 4 presents the logistic regression model of the ROR decision for Manhattan. Overall, this model explained 68 percent of the variance in ROR decisions in Manhattan, as indicated by the Nagelkerke R^2 value following the final step in the model.

Table 4
LOGISTIC REGRESSION MODEL OF THE ROR DECISION

All Cases: Manhattan (N = 852)

Independent Variables	Odds Ratio	Standardized β
Charge variables		
Offense type = Theft Intangible (most severe charge entering arraignment) (0=no; 1=yes)	6.20	.15***
Number of arrest charges (1, 2, 3, 4+)	.75	–.09*
At the end of Step 1: Nagelkerke R^2 = .07		
Criminal History variables		
First arrest (0=no; 1=yes)	5.59	.25***
Number of prior misdemeanor convictions (0-87)	.95	–.14**
On parole (0=no; 1=yes)	.22	–.12***
At the end of Step 2: Nagelkerke R^2 = .33 (change = +.26)		
CJA Interview variable		
Recommended for ROR: verified community ties (0=no; 1=yes)	2.33	.11**
At the end of Step 3: Nagelkerke R^2 = .35 (change = +.02)		
Defense Attorney/Defendant variables from courtroom observations		
Defense argument: Not a flight risk (0=no; 1=yes)	2.40	.14***
Defendant was disrespectful (0=no; 1=yes)	.09	–.10*
At the end of Step 4: Nagelkerke R^2 = .37 (change = +.02)		
Assistant District Attorney variables from courtroom observations		
Bail request (1=consent to ROR; 2=$250-749; 3=$750–2,499; 4=$2,500–4,999; 5=$5,000–9,999; 6=$10,000–49,999; 7=$50,000 or higher; 8=remand)	.34	–.67***
ADA argument: Prior or open warrants (0=no; 1=yes)	.36	–.15***
ADA argument: Predicate felon (0=no; 1=yes)	.53	–.08*
At the end of Step 5: Nagelkerke R^2 = .68 (change = +.31)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

Charge variables, entered in the first step, explained seven percent of the variance in ROR. Two charge-related variables were significant predictors, controlling for all other variables in the model. The offense type categorized as "theft intangible"[10] increased the odds of

[10] Charges categorized as theft intangible include offenses relating to theft, forgery offenses, offenses involving false written statements, insurance fraud, other frauds, and bribery involving public servants and related offenses. Of the 69 cases with this charge type in the sample, the majority were felonies (mostly forgery). Misdemeanor cases in this category included 11 vendors charged with trademark violations and 5 defendants charged with theft of services (turnstile jumping).

release by a factor of six, compared to all other charge types (odds ratio 6.20). The number of arrest charges was a weaker predictor, as indicated by the standardized *beta* of –.09 (compared to .15 for theft intangible). As the number of arrest charges increased from one to four or more, the odds of ROR decreased (as indicated by the negative coefficient). For each additional arrest charge the odds ***against*** ROR increased by 33 percent (1/. 75=1.33).

The second step in this model tested the effect of criminal history variables on ROR. For defendants in the sample who had no prior adult arrests, the odds of ROR were over five times higher compared to defendants for whom the instant case was not the first arrest.[11] Each prior conviction for a misdemeanor offense increased the odds ***against*** ROR by five percent (1/.95=1.05)—not much, seemingly, but if a defendant had 20 prior misdemeanor convictions then the odds against ROR would be doubled. Further, defendants who were on parole at the time of arrest faced odds ***against*** ROR that were four times greater than those who were not on parole (1/.22=4.55). The criminal history variables together accounted for an additional 26 percent of the variance.

The CJA recommendation was entered in the model in step 3. The odds of ROR were over two times greater for defendants who received a positive recommendation from CJA, controlling for all other variables in the model.[12] This variable explained an additional two percent of the variance, bringing the total explained variance in the ROR decision to 35 percent. The standardized *beta* for the CJA recommendation was .11, indicating that this variable had a weak but still significant effect on the ROR decision.

In step 4 variables from the courtroom observations of the defendant and the defense attorney were entered. The defense attorney's argument that his or her client was not a flight risk doubled the odds of ROR, over and above the benefit conferred by the CJA recommendation (and controlling for all other variables in the model as well). The defendant's demeanor was also a significant factor. Although the demeanor variable represented a subjective assessment by the CJA observer, the basis for coding a defendant as disrespectful usually involved a blatant, disruptive, outburst in court, such as ripping up a temporary order of protection or some other behavior that prompted a reprimand by the judge or court officers. The odds against ROR for a defendant who was disrespectful were 11 times higher than for other defendants (1/.09=11.11). This indicates that the defendant's demeanor had a strong effect on the odds, but with a standardized *beta* of –.10, the variable nevertheless was a weak predictor because so few defendants were openly disrespectful (less than 2% of defendants in the Manhattan sample, as shown in Table 1-F). The defense argument pertaining to flight risk was somewhat more important (with a standardized *beta* of .14). The addition of the defense attorney/defendant observation variables added two percentage points to the proportion of variance explained by the model, increasing to 37 percent the proportion of the variance explained by the variables entered through step 4.

The last step in the model was the addition of variables from the courtroom observations based on the assistant district attorney (ADA) arguments. The prosecutor's bail request, coded

[11] As noted previously, "first arrest" refers to defendants with no convictions or open cases as an adult, but does not preclude a possible juvenile arrest or an adult arrest that ended with sealing of the case.

[12] The CJA recommendation was coded as a dichotomous variable indicating whether or not the defendant was given the highest CJA recommendation (including adults with verified community ties and juveniles who were recommended using the separate criteria for JOs). Defendants with a qualified CJA recommendation (unverified community ties) were not coded as "recommended" for this variable.

as a range of eight bail categories, was by far the strongest variable in the model, with a standardized *beta* of –.67. The odds ***against*** ROR almost tripled with each incremental category of bail amount requested (1/.34=2.94). The odds of ROR also decreased when the prosecutor cited a defendant's warrant history or status as a predicate felon. It is interesting to note that the ADA's mention of these aspects of criminal history were better predictors of ROR than the actual record of prior warrants or felony convictions (i.e., predicate felon status). Often these factors were not mentioned, even when applicable. For example, in fewer than half of the cases in which the defendant did in fact have a prior felony conviction did the prosecutor mention that fact. It may be that prosecutors were more likely to raise these points when the defendant's record was particularly egregious. Adding the ADA variables increased the proportion of variance explained by 31 percentage points, resulting in the total explained variance for the ROR decision model of 68 percent.

The absence of charge severity in this model requires an explanation, given this factor's nearly universal importance in predicting ROR in prior research. A preliminary bivariate analysis of the correlation between ROR and arraignment charge severity did reveal a strong relationship, and the variable was therefore initially examined as part of the multivariate analysis of the ROR model for Manhattan. However, charge severity was also highly correlated with the ADA's bail request, indicating that charge severity was a key factor in the amount of bail that prosecutors requested. Charge severity and the ADA's bail request thus represent overlapping measures, but they were not identical. Because variables that are highly correlated with each other cannot be entered together in the same statistical model, one or the other had to be selected for the analysis. Bail request was selected as the better choice because it was the more powerful predictor, suggesting that it was based on other considerations as well as charge severity.

D. Logistic Regression Models of the ROR Decision for Selected Subsamples

Separate statistical models are presented in this section for two subsets of cases. One is a model for misdemeanor cases; the other is a model for all cases decided by Judge #2. These models illustrate how the factors that enter into the ROR decision may differ depending on the type of case under consideration, or depending on the judge who is making the decision. The ROR model for the entire sample blends all these considerations together into a statistical "average" of significant factors, but this obscures the dynamics at work in specific situations.

Separate models were also developed for felony cases, for cases in which the defendant had no prior criminal record, for drug cases, and for five additional judges (#3, #5, #7, #10, and #17—all the judges with 75 or more cases in the sample). These additional subsample models are displayed in Appendix C.

1. ROR Model for Misdemeanor Cases in Manhattan

Table 5 presents the logistic regression model of the ROR decision for cases with a misdemeanor arraignment charge in Manhattan. Overall, this model explains 68 percent of the variance in ROR decisions in Manhattan for cases with a misdemeanor arraignment charge.

Excluding felony cases from this subset weakened the correlation between charge severity and the ADA bail request, so that both could be entered together in this model. Thus the misdemeanor model—unlike the all-cases model—includes charge severity as a significant factor. This indicates that for misdemeanor cases, charge severity and the ADA bail request each affected the ROR decision above and beyond the effect of the other. As the severity of the top charge decreased, from an A misdemeanor down to an unclassified misdemeanor, the odds of ROR improved. For each decrement in severity, the odds of ROR were more than five times greater. This is the second strongest predictor (with a standardized *beta* of .31), even controlling for the stronger effect of the ADA bail request (with a standardized *beta* of –.45).

Table 5
LOGISTIC REGRESSION MODEL OF THE ROR DECISION

Misdemeanor Cases: Manhattan (N = 387)

Independent Variables	Odds Ratio	Standardized β
Charge variables		
Severity class of the most severe charge entering arraignment (1=A misdemeanor; 2=B misdemeanor; 3=U misdemeanor)	5.41	.31*
Offense type = Property Crime (most severe charge entering arraignment) (0=no; 1=yes)	.18	–.15**
At the end of Step 1: Nagelkerke R^2 = .12		
Criminal History variables		
One or more prior bench warrants (0=no; 1=yes)	.11	–.29***
On parole (0=no; 1=yes)	.20	–.12**
At the end of Step 2: Nagelkerke R^2 = .43 (change = +.31)		
CJA Interview variable		
Length of time at current address is 18 months or more (0=no; 1=yes)	3.68	.16**
At the end of Step 3: Nagelkerke R^2 = .45 (change = +.02)		
Judicial Variability		
ROR orientation in non-felony cases (1=lenient; 2=medium; 3=strict)	.42	–.17**
At the end of Step 4: Nagelkerke R^2 = .47 (change = +.02)		
Assistant District Attorney variables from courtroom observations		
Bail request (1=consent to ROR; 2=$250-749; 3=$750–2,499; 4=$2,500–4,999; 5=$5,000 or higher or remand)	.17	–.45***
ADA argument: Strength of case (0=no; 1=yes)	.06	–.15***
ADA argument: Victim (0=no; 1=yes)	.36	–.13*
ADA argument: Buy-and-bust (0=no; 1=yes)	.03	–.10**
At the end of Step 5: Nagelkerke R^2 = .68 (change = +.21)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

Another significant charge variable for misdemeanor cases was the type of offense, specifically whether the top arraignment charge was a property crime.[13] The odds ***against*** ROR were over five times higher for property crimes than for other charge types (1/.18=5.56). Together, the two charge-related variables explained 12 percent of the variance in the ROR decision for cases with a misdemeanor charge. This was a higher proportion than was accounted for by charge-related variables in the all-cases model (7%), and this difference can be attributed largely to the inclusion of charge severity in step 1.

Criminal history, entered in step 2, explained more of the ROR decision in misdemeanor cases than any other group of variables. Criminal history variables accounted for 31 percent of the variance, more even than the ADA variables (21%). Being on parole and having a bench warrant history both greatly lowered the chances for ROR for defendants having either of these liabilities. The odds ***against*** ROR were five times higher for defendants who were on parole, compared to defendants not on parole (1/.20=5). The odds ***against*** ROR were 9 times higher for defendants who had one or more prior bench warrants, compared to defendants with no prior bench warrants (1/.11=9.09). The prior bench warrant variable was one of the strongest predictors in the model, with a standardized *beta* of –.29.

The CJA recommendation itself was not as strong a predictor for misdemeanor cases as was one of its community ties components: defendants who reported that they had lived at their current address for 18 months or longer were more likely to be released (odds for ROR more than tripled).[14] The recommendation overlapped too much with its components for both to be entered together. This variable explained another two percentage points of the variance.

Judicial variability, which was not a significant factor when all cases were modeled together, was significant for both misdemeanor cases and for felony cases (shown in Appendix C, Table C-1) when the two levels of charge severity were analyzed separately. Odds for release more than doubled for a defendant in a misdemeanor case who appeared before a judge with a "medium" orientation, as opposed to a judge with a "strict" orientation (1/.42=2.38); and the odds doubled again if the judge had a "lenient" orientation, controlling for all other factors. Another two percentage points of the variance were explained by judicial variability.

In the final step, the ADA bail request along with three prosecution arguments added greatly to the explanatory power of the model. The bail request was the strongest predictor in the misdemeanor model, just as it was in nearly every model. The odds ***against*** ROR were over five times greater for each increment of bail requested (1/.17=5.88), coded as a range of five categories from 1 (consent to ROR) to 5 ($5,000 or higher). Also significant were the prosecutor's use of arguments based on the strength of the case, the victim, and identification of the arrest as a "buy and bust" operation. The odds ***against*** ROR were over 16 times greater for defendants in cases where the prosecutor cited the strength of the case (1/.06=16.67), three times

[13] Property crimes include burglary and related offenses, criminal mischief and related offenses, larceny offenses, and other offenses relating to theft. The majority of cases with this charge type in the ROR model for misdemeanor cases were larceny charges.

[14] The CJA interviewer attempts to verify this and other interview items by calling a contact number supplied by the defendant. The responses to these questions are coded as yes, unverified; yes, verified; no, unverified; no, verified; or unresolved conflict. For the purposes of the present research all interview items were recoded into a dichotomous variable indicating if the defendant answered yes (verified or unverified) or no (verified or unverified). Also included with the no responses were the unresolved conflicts.

greater when there was a victim (1/.36=2.78),[15] and 33 times greater for "buy-and-bust" operations (1/.03=33.33), compared to other types of arrests. In a buy-and-bust case, an undercover police officer makes an arrest, usually after buying drugs from a suspected drug dealer. Similar cases that involved weapons sales were also coded as buy-and-bust for the purposes of this study when mentioned by the ADA. The evidence in buy-and-bust cases is usually strong, so this variable measures another aspect of the strength of the case. In spite of dramatically lowering a defendant's chances for ROR, however, none of these arguments was a powerful predictor because of the small numbers of affected cases (as indicated by relatively small *betas* of –.15, –.13 and –.10 respectively).

2. ROR Model for Judge #2 in Manhattan

Table 6 presents the logistic regression model of the ROR decision for Manhattan for Judge #2. Overall, this model explains 77 percent of the variance in ROR decisions in Manhattan for Judge #2 (selected because this was the judge with the largest number of cases).

Table 6
LOGISTIC REGRESSION MODEL OF THE ROR DECISION
Cases Decided By Judge #2: Manhattan (N = 139)

Independent Variables	Odds Ratio	Standardized β
Charge variables		
Number of VFO charges entering arraignment (0, 1, 2+)	.07	–.26*
Severity class of the most severe charge entering arraignment (1=A felony; 2=B felony; 3=C felony; 4=D felony; 5=E felony; 6=A misdemeanor; 7=B misdemeanor; 8=U misdemeanor; 9=violation; 10=infraction)	2.68	.44***
At the end of Step 1: Nagelkerke R^2 = .30		
Criminal History variables		
Number of prior misdemeanor convictions (0-64)	.87	–.32*
One or more open cases (0=no; 1=yes)	.14	–.20**
At the end of Step 2: Nagelkerke R^2 = .62 (change = +.32)		
CJA Interview variable		
Employed or in school (0=no; 1=yes)	3.60	.14*
At the end of Step 3: Nagelkerke R^2 = .66 (change = +.04)		
Assistant District Attorney variable from courtroom observations		
ADA argument: Criminal history, composite (0=no; 1=yes)	.03	–.38***
At the end of Step 4: Nagelkerke R^2 = .77 (change = +.11)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

Charge variables appear to have played a stronger role in Judge #2's decisions than in the sample as a whole, with 30 percent of the variance accounted for by charge severity and the number of violent felony offender (VFO) arraignment charges. (This contrasts with only 7%

[15] The victim variable used in this model was created from two sources. The first was the relationship between the defendant and victim mentioned by the ADA. The second was the NYPD variable for the defendant-victim relationship, available from the CJA database, which was used to fill in data for a large number of cases for which nothing was recorded in the observation file.

accounted for by charge variables in the all-cases model, and 12% in the misdemeanor model.) As the number of VFO charges increased, the odds of ROR decreased. The odds ***against*** ROR increased by over 14 times for each additional VFO charge, from zero to two or more (1/.07=14.29). And, as the severity of the top charge decreased from an A felony down to a misdemeanor or lower,[16] the odds of ROR doubled with each decrement. Charge severity was the most important single factor in the model, with a standardized *beta* of .44. The prosecutor's bail request was not entered in the analysis for Judge #2, which accounts for the increased importance of charge severity in this model. Although the bail request had a very strong bivariate correlation with ROR (stronger even than charge severity), it was too highly correlated with the ADA's mention of the defendant's criminal history[17] for inclusion in the same model. For Judge #2, the ADA criminal history argument was apparently a crucial piece of information. It had the strongest bivariate correlation with ROR, so it took precedence over bail request for entry in the analysis.

The second step in the model tested the effect of criminal history (the defendant's actual criminal record, not the variable measuring whether the prosecutor cited it or not). Each prior conviction for a misdemeanor offense increased the odds ***against*** ROR by 15 percent (1/.87=1.15). We pointed out in the discussion of the all-cases model that while a small percentage increase for each prior conviction may seem trivial, for defendants with dozens of prior misdemeanor convictions this meant that the odds against ROR were quadrupled, or worse. Having an open case also decreased a defendant's chances of release. The odds ***against*** ROR were seven times higher for defendants who had one or more open cases compared to defendants with no open cases (1/.14=7.14). The criminal history variables explained an additional 32 percent of the variance, for a total of 62 percent of the variance explained by charge and criminal history variables alone.

Again, a component of the CJA recommendation rather than the recommendation itself was a significant predictor in the model: defendants who reported that they were employed, in school, or in a treatment program full time were more likely to be released (the odds in favor of ROR more than tripled). This variable explained four percent of the variance, in addition to that explained by charge and criminal history.

The final step was the addition of the assistant district attorney criminal history argument. The odds against ROR were 33 times higher when the prosecutor stated one or more arguments concerning the defendant's criminal history (1/.03=33.33). With a standardized *beta* of –.38, the ADA criminal history argument was one of the strongest predictors in this model, even controlling for convictions and open cases. Adding this courtroom observation variable increased the explained variance by 11 percentage points, resulting in a total of 77 percent of the variance explained by the model for cases decided by Judge #2.

Drug cases were significantly less likely to be ROR'd by Judge #2 than other types of charges, but this variable does not appear in the model. Drug offenses were too highly correlated with charge severity to be entered together in the same model. Substituting drug type for charge severity produced results similar to those presented in the model. Almost as much of the

[16] There were only two cases in this model with a charge severity lower than an unclassified misdemeanor.

[17] This is a composite variable, coded "yes" for all cases in which a specific criminal history item listed on the coding sheet was checked, in addition to all cases in which no specific item was checked but the category heading "criminal history" was checked.

variance was explained, regardless of whether drug charge or charge severity was used as the predictor. Defendants facing drug charges were much less likely to receive ROR compared to defendants facing other charges largely because the majority of the drug charges were felonies.

E. Summary of Factors Affecting the ROR Decision in Manhattan

The statistical analyses of the Manhattan observation sample confirm the findings of prior research that the severity of the charges and criminal history of the defendant are consistently important considerations in understanding ROR decisions. However, the prosecutor's bail request emerged as the most important single factor. This finding can be largely attributed to the close correspondence between the bail request and both of the other factors. Charge severity did not appear as a significant predictor in the model for all cases only because most of the information about charge severity was accounted for by the bail request. The bail request can be considered a summary measure of charge severity, criminal history and other factors such as the strength of the case.

It is noteworthy that in every analysis, including the all-cases model as well as all nine subsample models, some aspect of criminal history was a significant factor independent of the prosecutor's bail request. Having a prior arrest, a prior conviction, a prior warrant, being on parole, or having an open case were factors that reduced chances of ROR. What the prosecutor said in court about the defendant's criminal history also had an effect, beyond the effect of the actual criminal record. This was evident in the models for all cases and for Judge #2, as well as for felony cases and drug cases (Appendix C, Tables C-1 and C-3 respectively).

The data presented here suggest, but do not prove, that prosecutors had a considerable influence on the ROR decision. The findings are also consistent with the possibility that the prosecutor's assessment of the case was often in alignment with the judges' independently derived opinions. Yet, on one occasion a judge said that he was reluctant to ROR a particular defendant but was doing so anyway, because the prosecutor had consented; he explained that he "would not second-guess the prosecutor". In any event, without data from prosecutors' statements in court, the ability to predict ROR was diminished.[18]

Defense attorneys were less successful than prosecutors in influencing release outcomes. Attempting to convince the court that a defendant was not a flight risk did help a client's chances for ROR generally (all-cases model), but this was a weak factor that was overshadowed by others when misdemeanor cases were analyzed separately from felonies. For drug cases (Table C-3), the defense attorney's claim that the defendant had strong community ties had a significant impact, but the prosecutor's arguments had a much greater impact in this and all other analyses.

The CJA recommendation was a significant predictor for the all-cases model and for the separate model of felony cases, moderately increasing the likelihood of ROR for recommended defendants. For misdemeanor cases the CJA recommendation was not significant, but one of its components—residing 18 months or more at the current address—was significantly associated with a better chance of ROR. Another community ties component of the recommendation system, the defendant's employment status, was significant in the model for Judge #2. For the

[18] A logistic regression model of ROR for Manhattan cases in the FQ2001 data set was presented in the pilot study (Phillips 2002). Using only defendant and case variables from the CJA database, the model explained 51% of the variance—17 percentage points less than explained by the current analysis utilizing variables collected in court.

subset of first arrests (Table C-2), the ADA argument that the defendant was not recommended by CJA significantly lowered the chance of ROR, outweighing the direct effect of the recommendation itself. Thus it appears that the recommendation or its elements did play some role, though not a large one, in ROR decisions both overall and for many subgroups.

Finally, the role of judicial variability was examined. Judicial variability — differences among judges that could not be attributed to differences among cases or defendants — was a significant factor when misdemeanor and felony cases were examined separately. Its effect was masked in the aggregate sample because an individual judge's tendency to ROR more or fewer defendants than other judges was usually limited to one level of severity, or even operated in the opposite direction for felonies as opposed to misdemeanors. When examined at each level of severity separately, judicial variability was a significant factor, though not a strong one. Even so, the separate models that were developed for five judges indicated that they generally considered the same factors to be important: the prosecutor's bail request and the defendant's criminal history were predominant. The only model in which the prosecutor's bail request was not the most powerful factor was the model for Judge #2; the prosecutor's bail request was not entered in this model because of its high correlation with criminal history for these particular cases. For this judge, charge severity replaced the bail request as the variable with the strongest effect on ROR. However, because there is considerable overlap between the prosecutor's request and charge severity, this represents a difference in emphasis rather than substance.

V. Factors Affecting the Amount of Bail Set in Manhattan

A. Median Bail Amount by Charge Severity and Judge

Figure 2 compares median bail amounts set by each judge, separately for felonies and non-felonies. The median is the amount below and above which there is an equal number of cases. The median is a better measure than the average (mean) for this purpose because one very large bail amount could raise the average far above the level of the bail set for most cases. The figure shows that median bail amounts for non-felony cases (blue bars) were much lower than for felony cases (red bars). No judge had a median amount over $2,000 for non-felony cases, nor under $2,000 for felonies. Overall, the median felony bail was seven times higher than non-felony bail. (Only cases for which bail was set were included in the bail amount analyses.[19])

Figure 2

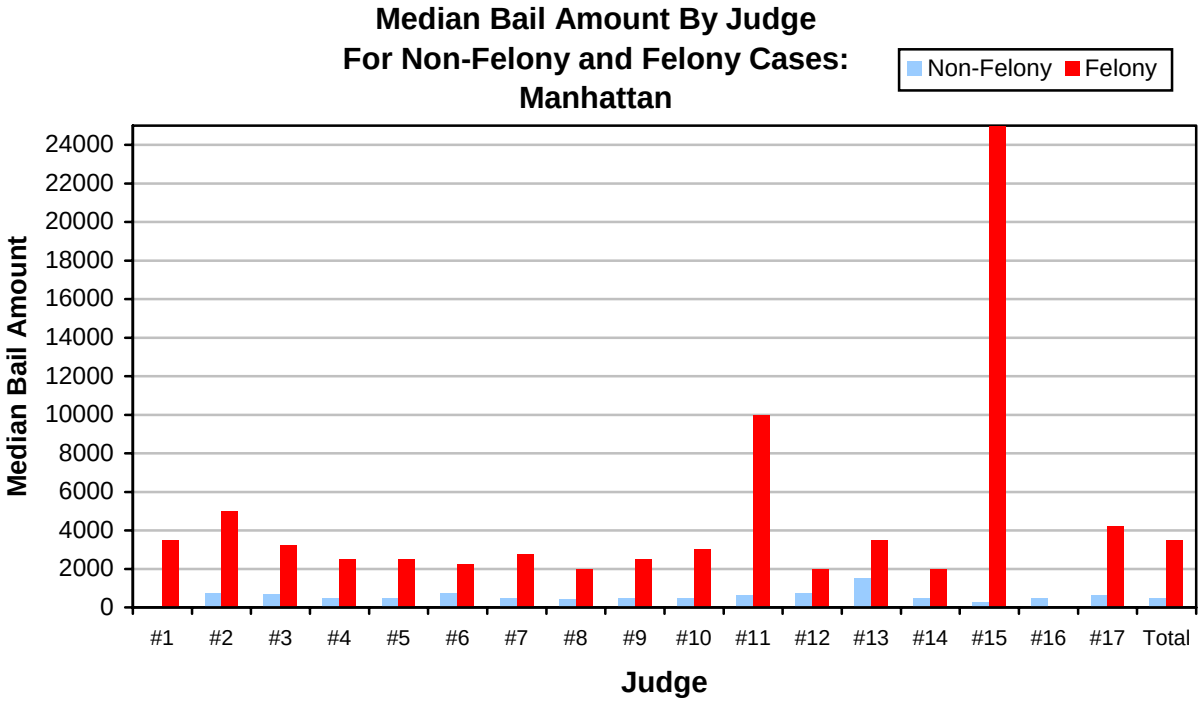

Figure 2 also illustrates the large differences among individual judges, even accounting for the level of severity of the charge. For example, Judge #15 set extraordinarily high bail for felony cases, and Judge #11 also set felony bail much higher than most. For non-felony cases there was less variation, but there were still differences. Judge #15 set bail relatively low and #13 set bail relatively high when the charge was not a felony.

Table 7 presents the same information showing the exact percentages and the number of cases represented by each bar in Figure 2.

[19] An additional 13 cases had bail set at one dollar. These cases were not included in the analyses because the amount is merely symbolic and is not an indication of the amount the defendant would need to gain release. In such cases, the defendant usually had higher bail set (or was remanded) on another case.

Table 7

Median Bail Amount By Judge For Non-Felony and Felony Cases: Manhattan

Judge	Non-Felony		Felony	
#1	—	(n= 0)	$3,500	(n= 7)
#2	$750	(n= 19)	$5,000	(n= 44)
#3	$700	(n= 11)	$3,250	(n= 48)
#4	$500	(n= 9)	$2,500	(n= 12)
#5	$500	(n= 5)	$2,500	(n= 35)
#6	$750	(n= 8)	$2,250	(n= 14)
#7	$500	(n= 15)	$2,750	(n= 18)
#8	$425	(n= 2)	$2,000	(n= 15)
#9	$500	(n= 3)	$2,500	(n= 5)
#10	$500	(n= 8)	$3,000	(n= 24)
#11	$625	(n= 2)	$10,000	(n= 11)
#12	$750	(n= 2)	$2,000	(n= 5)
#13	$1,500	(n= 3)	$3,500	(n= 15)
#14	$500	(n= 3)	$2,000	(n= 3)
#15	$250	(n= 3)	$25,000	(n= 9)
#16	$500	(n= 1)	—	(n= 0)
#17	$625	(n= 6)	$4,250	(n= 10)
All cases	$500	(n=100)	$3,500	(n=275)

The median bail amount set for all felony cases was $3,500, compared to $500 for non-felonies. Every judge set much higher bail amounts for felony cases, anywhere from more than double (Judge #13) to 100 times (Judge #15) the median amount set by the same judge for cases of lesser severity. This strongly suggests that charge severity was an important consideration in setting the amount of bail, just as it was in the ROR decision.

The ROR analysis showed that a judge's individual orientation—a tendency to be more or less lenient than other judges, given the same type of case—was also a significant factor influencing the ROR decision even after all other significant factors were taken into account. It is clear from the data presented in Figure 2 and Table 7 that there were large differences among judges in bail amounts that were not explained by charge severity. The multivariate analysis that follows will evaluate the simultaneous effects of many factors, including charge severity, in order to determine their relative influence on bail amounts. If judicial variability is significant in the multivariate statistical models, then we can conclude that differences among the judges account for some part of the variation in bail amounts as well as in ROR rates.

B. Multivariate Analysis: Variables and Statistical Measures

The dependent variable for this part of the analysis was the dollar amount of bail set at arraignment in Criminal Court, usually payable as bond or cash. Occasionally the judge specified that the amount be paid as cash only. In both instances, the single amount specified by the judge was the dependent variable. For the small proportion of cases in which the judge set a bond amount along with a lower cash alternative (30 cases), the lower cash amount was taken as the dependent variable. (Distributions of the form of bail set were given in Table 1-F.) Bail amounts set on multiple dockets for the same case were summed.

The independent variables tested in the analyses were the same as those tested in the ROR analyses (see Appendix A). A stepwise procedure was used for entering them in the regression analyses similar to that employed in the ROR analyses in order to identify the proportion of variance explained by each group of variables separately.

Ordinary Least Squares (OLS) regression was the multivariate statistical procedure used. As noted earlier, this method is suitable when the dependent variable is a continuous integer-level variable such as bail amount. Like a logistic regression model, OLS regression produces statistics showing which independent variables have a statistically significant effect on the dependent variable, the relative magnitude of the effect of each independent variable, and the proportion of the variance in the dependent variable that is explained by the variables in the model. However, the specific statistical measures differ somewhat from logistic regression.

The statistical measures presented in the OLS regression models include:

- Adjusted R^2: this is interpreted similarly to the Nagelkerke R^2 in logistic regression, as the proportion of the variance in bail amount that is explained by the independent variables. The adjusted R^2 at the end of each step indicates the proportion of the variance explained by the variables entered in that and all previous steps; the adjusted R^2 at the end of the final step indicates the proportion of variance explained by the model as a whole.
- Unstandardized *beta* coefficient (β): a measure of the magnitude of the effect of the independent variable on bail amount, controlling for all other variables in the model (including those entered in subsequent steps). It is interpreted as the average change in bail amount for each unit of change in the independent variable. The sign (negative or positive) of the coefficient indicates the direction of the change. For example, if the unstandardized *beta* for gender were –2,000, this would mean that the average bail amount for females was $2,000 less than the average bail set for males (if 0=male and 1=female), controlling for all other factors in the model. (This example is hypothetical and does not represent the findings of this study.)
- Standardized *beta* coefficient (β): this statistic has the same interpretation as the standardized *beta* in logistic regression. It is a measure of the relative importance of each independent variable, controlling for all other variables in the model (including those entered in subsequent steps).
- Statistical significance: also the same as in logistic regression. It is a measure of the likelihood that the results were the product of chance alone. Coefficients with no asterisk in the OLS regression models were not statistically significant, controlling for other factors. A variable that was not significant may have had a large effect on bail amount, causing it to remain in the model, but its lack of statistical significance could be attributed

to the small number of cases affected by the variable. A higher level of significance, indicated by a greater number of asterisks, indicates that the results are more likely to be real (less likely to be the result of chance alone).

C. OLS Regression Model of the Amount of Bail Set in Manhattan

Table 8 presents the statistical model for the factors affecting the amount of bail set in Manhattan. Overall, this model explained 66 percent of the variance, as indicated by the adjusted R^2 following the final step in the model.

Cases with a Class-A felony top charge were excluded from this model because they did not fit the patterns for most cases. Their inclusion produced some anomalous results, and the proportion of variance explained by the model was lower when they were included (.51 compared to .66). This can probably be attributed to very low bail amounts set for some defendants charged with an A felony, in spite of the severity of the charge, because of problems with the complaint or issues raised about police procedures.[20]

Table 8
OLS REGRESSION MODEL PREDICTING BAIL AMOUNT SET AT CRIMINAL COURT ARRAIGNMENT (Cases for which bail was set)

All Cases: Manhattan (N=351)†

Independent Variables	β	Standardized β
Charge and Criminal History variables		
Number of Violent Felony Offense arrest charges (1, 2, 3, 4+)	4,379	.23***
Severity class of the most severe charge entering arraignment 1=Violation; 2=Unclassified misdemeanor; 3=B misdemeanor; 4=A misdemeanor; 5=E felony; 6=D felony; 7=C felony; 8=B felony	473	.06
Adjusted R^2 at the end of Step 1 = .26		
Judicial Variability		
Bail orientation in felony cases (1=low; 2=medium; 3=high)	3,519	.13***
Adjusted R^2 at the end of Step 2 = .28 (change = +.02)		
Defense Attorney variables from courtroom observations		
Requests ROR (0=no, 1=yes)	–2,545	–.09**
Adjusted R^2 at the end of Step 3 = .30 (change = +.02)		
Assistant District Attorney variables from courtroom observations		
Bail request (in $1,000 increments)	146	.66***
Final adjusted R^2 for the model = .66 (change = +.36)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

† Excluding 17 cases with a Class-A felony as the top arraignment charge

[20] Two of the three A-felony cases with bail set at $3,500 or less were ultimately dismissed in court. The third was indicted and resulted in a conviction, but not before the bail had been raised from $2,000 set at Criminal Court arraignment to $25,000 at indictment (while the charge was simultaneously reduced to a Class-B felony).

Table 8 indicates that the prosecutor's bail request was just as important in determining the bail amount as it was found to be in the ROR decision. The standardized *beta* for the ADA bail request was .66, many times larger than for any other variable in the model. For every increase of $1,000 in the prosecutor's request, average bail rose by $146. The unstandardized *beta* was small, but—because the bail request variable had many more units of change than other variables—its overall effect on the dependent variable was many times greater than the effect of any other factor.

Charge variables accounted for 26 percent of the variance in bail amount with no other variables entered in the analysis. The correlation between charge severity and the prosecutor's bail request was not too high to include both in the same model, but charge severity was no longer a significant predictor once the bail request was held constant. The number of violent felony offense (VFO) arrest charges was the only statistically significant variable in this group, and the second most important overall, with a standardized *beta* of .23. Each additional VFO arrest charge added over $4,000 to the average bail amount.

Judicial variability was tested in step 2, using bail orientation for felony cases as the measure. Judges with a "high" bail orientation in felony cases set bail more than $3,500 higher, on average, than judges with a "medium" orientation, controlling for all other variables in the model; judges with a "medium" orientation set bail $3,500 higher than those with a "low" orientation. (See Appendix B for an explanation of how orientation was calculated.) Altogether, the proportion of variance explained by the judge's orientation to bail-setting in felony cases added two percentage points to the proportion already explained by charge variables.

The only defense attorney statement that affected bail amount significantly was a request for ROR. It is interesting that when the defense requested ROR, it did not significantly help the defendant's chances for ROR, but it did reduce the amount of bail by about $2,500, on average. This variable was a very weak predictor (with a standardized *beta* of –.09), and it added only two additional percentage points to the proportion of variance explained.

In the fourth and final step of the analysis, the prosecutor's bail request was entered along with other variables coded from the ADA's supporting arguments. None of the arguments was independently significant in the model, as the amount of bail requested overshadowed anything else the prosecutor said. The bail request added 36 percentage points to the amount of variance explained by other factors. This was over half of all the variance explained by the model as a whole (66%).

D. OLS Regression Models of the Amount of Bail Set for Selected Subsamples

Separate statistical models were developed for five subsets of cases based on attributes of the charge or the defendant's criminal history, and for two individual judges. Two subsample models are presented here: a model for misdemeanor cases and one for Judge #2. These subgroups were selected because they are directly comparable to the ROR models.

The three other subsample models are presented in Appendix D. They include a model for felony cases, one for defendants with prior arrests, and one for drug cases. Further judge-specific models were not feasible because there were no other judges in the sample with enough cases in which bail was set.

1. Bail Amount Model for Misdemeanor Cases in Manhattan

Table 9 presents the OLS regression model of the bail amount set for cases with a misdemeanor arraignment charge in Manhattan. Overall, this model explained 48 percent of the variance, which made it considerably weaker than the all-cases model. (The misdemeanor model presents an even greater contrast to the felony model, which explained 78% of the variance but was otherwise similar to the all-cases model; see Appendix C.) A reason for the lower R^2 could be that there is less variance to explain, since bail amounts for misdemeanor cases were set within relatively narrow limits. The range in bail for misdemeanor cases was $150 to $3,000, whereas the range for felony cases was $250 to $250,000.[21]

Table 9
OLS REGRESSION MODEL PREDICTING BAIL AMOUNT SET AT CRIMINAL COURT ARRAIGNMENT (Cases for which bail was set)

Misdemeanor Cases Only: Manhattan (N=95)

Independent Variables	β	Standardized β
Charge and Criminal History variables		
Number of felony arrest charges (1, 2, 3, 4+)	156	.16*
Adjusted R^2 at the end of Step 1 = .07		
Judicial Variability		
Judge #2 (0=no, 1=yes)	439	.31***
Judge #13 (0=no, 1=yes)	523	.24**
Adjusted R^2 at the end of Step 2 = .23 (change = +.16)		
Defense Attorney variables from courtroom observations		
Criminal history argument, composite (0=no, 1=yes)	–262	–.21**
Adjusted R^2 at the end of Step 3 = .26 (change = +.03)		
Assistant District Attorney variables from courtroom observations		
Bail request (1=less than $1,000; 2=$1,000-1,500; 3=$1,501-3,000; 4=$3,001+)	342	.50***
Final Adjusted R^2 for the model = .48 (change = +.22)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

For misdemeanor cases, the prosecutor's bail request was once again the strongest factor, with a standardized *beta* of .50. For best results, the bail request was recoded into four categories: less than $1,000; $1,000 to $1,500; $1,501 to $3000; and over $3000. For each unit change in the bail request, the bail set rose by $342. This variable accounted for nearly half of all the explanatory power of the model (22% out of the 48% explained by the model as a whole). For cases in this subsample the prosecutor's bail request was obviously based on something more

[21] The standard deviation (a statistic that measures the amount of variation in a distribution) was 559 for misdemeanor bail amounts, compared to 28,529 for felony bail amounts. This indicates a very large difference in the variation of bail amounts in the two subsamples.

than charge severity, as there was almost no variation. In all but two cases, the most severe charge entering arraignment was a Class-A misdemeanor (the other two were B misdemeanors).

The only significant factor from a source other than the observations was the number of felony arrest charges: for each additional felony charge (up to four), bail rose by $156. The top charge was reduced to a misdemeanor prior to arraignment in all of these cases (by definition, as the subsample was selected on that basis) but a felony arrest charge apparently sent a signal to the judge about the seriousness of the case. This variable was a significant but weak predictor, as there were only 17 cases with a felony arrest charge. The standardized *beta* was .16 and it explained a small proportion (7%) of the variance.

Judicial variability was a more prominent factor for misdemeanor cases than for all cases combined, or for felony cases (Appendix D, Table D-1). Two judges set bail significantly higher than the others: Judge #2 set bail $439 higher, and Judge #13 set bail $523 higher, on average, than other judges for similar kinds of cases. The standardized *betas* for the judge variables (.31 and .24 respectively) indicate that they were moderately strong predictors, second only to the prosecutor's bail request. Together, these two judges accounted for an additional 16 percent of the variance, after controlling for the number of felony arrest charges. Substituting a bail orientation variable for the two individual judges produced similar results to those displayed in Table 9, but explained slightly less of the variance. This indicates that judges other than #2 and #13 who were classified as low or high in bail orientation were actually not very different from their colleagues, as far as misdemeanor cases were concerned, once other variables in the model were controlled for.

The other variable with a significant effect on bail amount for misdemeanor defendants was the defense attorney's mention of the defendant's criminal history. This variable was coded "yes" if the defense used any aspect of his or her client's criminal record as a basis for arguing for ROR or lower bail. It could mean that the defense attorney pointed out a defendant's law-abiding past, or it could mean that the attorney acknowledged a serious criminal record and presented a mitigating factor. Thus, it does not correspond to any criminal history variable from the CJA database, and in fact none of those measures was significant. The defense attorney criminal history argument lowered the bail amount by an average of $262 for misdemeanor cases and contributed 3 percent to the total amount of variance explained by the model.

2. Bail Amount Model for Judge #2 in Manhattan

The small number of cases for which this judge set bail (57, excluding Class-A felonies) reduced the ability of any given factor to be statistically significant. Only variables with a very strong effect on bail amount could be statistically significant in so small a sample, so it was not surprising that only two such variables were found. It is nevertheless the most powerful model presented in this report. Eighty-four percent of the variance in bail amount was explained by the model as a whole—almost all of it by the prosecutor's bail request.

The standardized *beta* for the bail request was .90, which is an extraordinarily high coefficient. Like all other judges, Judge #2 usually set bail lower than the amount requested by the prosecutor. However, as the prosecutor's request rose, so did the amount set. For each $1,000 increment in the request, Judge #2 increased the amount set by $328, on average, controlling for all other factors.

Table 10
OLS REGRESSION MODEL PREDICTING BAIL AMOUNT
SET AT CRIMINAL COURT ARRAIGNMENT
(Cases for which bail was set)

Cases Decided by Judge #2: Manhattan (N=57)†

Independent Variables	β	Standardized β
CJA recommendation (0=no, 1=yes, including qualified recommendation) **Adjusted R^2 at the end of Step 1 = .07**	–2,672	–.05
Defense Attorney variables from courtroom observations Requests ROR (0=no, 1=yes) **Adjusted R^2 at the end of Step 2 = .12 (change = +.05)**	–3,364	–.06
Assistant District Attorney variables from courtroom observations Bail request (in $1,000 increments) Weapon mentioned, composite (0=no, 1=yes) **Final Adjusted R^2 for the model = .84 (change = +.72)**	 328 12,704	 .90*** .15*

***p ≤ .001, ** p ≤ .01, * p ≤ .05
†Excluding 4 cases with a Class-A felony as the top arraignment charge

The only other statistically significant variable in this model was whether the prosecutor mentioned a weapon. Regardless of the type of weapon or whether it was used, the mention of a weapon by the prosecutor was associated with an increase of $12,704 in bail amount. This was a very large effect, but because it affected only seven cases, the standardized *beta* was small (.15). Thus, the prosecutor's weapon argument explains why bail was very high for a few cases, but it does not help to explain variations in bail amount when a weapon was not mentioned, which was most of the time.

The two other variables in the model for Judge #2 were the CJA recommendation and the defense attorney's request for ROR, but neither was statistically significant in the final model. A CJA positive recommendation and a defense request for ROR were both associated with lower bail, and both were statistically significant in the absence of the prosecutor's bail request. However, the bail request, entered in the last step, overshadowed their significance.

E. Summary of Factors Affecting the Amount of Bail Set in Manhattan

The prosecutor's bail request was the most important predictor of bail amount in every analysis. Charge severity, the factor most consistently found to be related to bail amount in prior studies, was generally not significant in this research only because of the inclusion of the prosecutor's bail request, which is itself an indirect measure of charge severity. Judges made it known that they are very much aware of the severity of the charge and take it into account when they set bail. However, this factor overlapped too much with the bail request to enter both variables in most analyses. Charge severity was less highly correlated with the bail request in some subsamples, allowing for its inclusion in the statistical analysis for those cases. When that was done — for example, among drug cases and cases of defendants with prior arrests — charge severity did have a direct, independent effect on the amount of bail.

The prosecutor's bail request, while reflecting charge severity, also reflects enough other information to make it a much better predictor than severity alone. This conclusion was reinforced by the results of the analysis of misdemeanor cases, where the prosecutor's bail request remained the most powerful predictor of bail amount even though virtually all the top charges were of the same severity.

The severity and number of arrest charges tended to have an independent effect on bail amount, beyond the effect of the prosecutor's bail request. For the all-cases model, the number of VFO arrest charges was the second strongest predictor; for misdemeanor cases, having a felony arrest charge (even though it was reduced to a misdemeanor before arraignment) raised bail significantly. This suggests that judges, more than prosecutors, were influenced by the NYPD assessment of the case, before any charge reductions were made by the District Attorney's office.

Judicial variability was also a significant predictor in all of the bail amount models (except, of course, the model for a single judge). The interpretation is similar, regardless of whether bail orientation or dummy variables for individual judges produced better results in any specific model. Judicial variability was most important for misdemeanor cases and for defendants with prior arrests (there was considerable overlap among the cases included in each of these subsamples). For misdemeanor cases, the most powerful predictors of bail amount (after the prosecutor's bail request) were whether the bail was set by Judge #2 or Judge #13.

Other significant predictors in the bail amount models included several ADA arguments that had small effects independently of the bail request (weapon, seriousness of the case, and strength of the evidence), as well as two items from the defense attorney (request for ROR and the defendant's criminal history). The defense attorney items were consistently weak predictors.

VI. Conclusions and Discussion

As this report presents data and analysis only for Manhattan, the conclusions presented here pertain only to that borough.

The first research question was: what factors influence ROR and bail-setting at Criminal Court arraignment? Our major finding is that the ADA bail request was by far the strongest predictor of both ROR and the amount of bail set. Other factors that would be expected to have some impact did not have an independent effect, or had only weak effects, because they were included indirectly as part of the bail request. Charge severity was the clearest example of such a factor, and some elements of criminal history might also be more important if the ADA bail request did not incorporate them. Although there was some overlap, the correspondence between the bail request and other factors was not perfect. The bail request was a better predictor than charge severity alone and remained the strongest predictor for both ROR and bail amount even in the absence of much variation in severity (for example, when misdemeanor cases were analyzed separately).

The meaning of this finding is somewhat ambiguous. When asked, judges generally told us that they were not greatly influenced by the amount of bail prosecutors requested. The possibility has been suggested that prosecutors and judges were responding to the same factors in arriving at similar assessments of the appropriateness of release or a bail amount. However, the fact that charge severity and criminal history were much less successful in explaining these decisions than was the prosecutor's bail request argues against this hypothesis. Another possibility, which would also be consistent with the findings presented in this report, is that the prosecutors adjusted their bail requests depending on what they thought a particular judge would accept. These issues are explored further in Part 3 (Cross-Borough Analysis).

The second research question was: do different factors influence the release decision and bail amount? The answer to this question is mixed. The prosecutor's bail request was the most important factor for both ROR and bail amount, and both aspects of the decision were also significantly affected by the number of arrest charges (specifically the number of VFO arrest charges for bail amount). Thus, considerations that apparently mattered in both aspects of the release/bail decision were the prosecutor's request, followed by independent considerations of the seriousness of the case (as indicated by the number and seriousness of charges).

However, there were differences as well, especially in the importance of criminal history. The defendant's criminal record, particularly a history of failure to appear in prior cases, was much more important for the release decision than for bail amount. Having a prior bench warrant was significant in most of the ROR models, but not in any of the bail amount models. Several other criminal history variables — having a prior arrest or prior conviction, being on parole, or having an open case—significantly decreased a defendant's chances for ROR in one or more models but did not affect bail amount.

Another difference between the factors affecting ROR and bail amount was found in the role played by the CJA recommendation. We did not expect the recommendation to affect bail amount, and it did not. The results show that a positive recommendation did significantly increase the likelihood of ROR, especially for felony cases, but other factors were much more important. Some of the elements that entered into the CJA recommendation (length of time at the same address and employment status), rather than the recommendation itself, significantly affected ROR in misdemeanor cases, and for cases decided by Judge #2.

This finding addresses the third research question, which asked about the importance of the CJA recommendation in either aspect of the decision. It came as no surprise that the recommendation did not figure more heavily in ROR decisions because many judges freely expressed their reservations about it during the course of the research. A recurring criticism was that the highest recommendation was automatically denied to defendants who live outside the New York City area, thereby excluding anyone from nearby New Jersey.[22] Another criticism was that the recommendation system did not take prior failure to appear into account, so that a defendant with a long history of bench warrants could still be recommended by CJA for release if he or she had verified community ties. These perceived shortcomings led some judges to ignore the CJA recommendation, by their own account, or to use it in ways for which it was not intended.[23] The new recommendation system, implemented June 30, 2003, no longer automatically denies a recommendation for ROR to people living outside the New York City area. Also, it is no longer possible for a defendant with a prior bench warrant to be recommended, and having an open case makes a recommendation less likely. The current research suggests that with these changes the recommendation system has been brought into better alignment with criteria that judges consider important. Thus they may now have more confidence in it than at the time of the field work for this study.

The final research question asked if there is consistency among judges in outcomes, i.e., *inter-judge consistency*. The evidence shows that some judges differed significantly from their colleagues in their ROR decisions for similar cases and defendants, but this depended on the severity level of the charge. On the whole, judicial variability explained only a little of the variation in ROR for both misdemeanor and for felony cases. It explained much more of the variation in bail amounts. This can be explained partly by the fact that there is much more variation possible in setting bail: bail outcomes range from a few hundred to many thousands of dollars (with no set limit), whereas the ROR outcome can be only yes or no. Judges have more room to depart from the norm in setting bail—and, as pointed out in the introduction, they also have less guidance. Individual differences among judges in bail amounts were especially prominent when defendants had a prior record. This suggests that norms in setting bail for first arrests may have been better established than for other defendants, whose records may vary from trivial to extensive or serious.

To the extent possible, we also examined inter-judge consistency in the factors that influenced decisions. This question asks whether judges considered the same factors in making their decisions, regardless of the consistency of the outcomes. This was done by developing separate ROR models for all cases decided by each individual judge with enough cases to analyze; there were five. (There was only one judge with enough cases for a separate bail amount model, so no test of inter-judge consistency was possible for the factors that influenced bail amount.) Either the ADA bail request or charge severity was the most powerful predictor of ROR for each of the five. Criminal history factors were important in all five models as well, although the specific variables differed. Most of the models included no other significant

[22] A verified New York area address (including Westchester, Nassau, and Suffolk counties as well as New York City) was required for the highest recommendation under the old system.

[23] One judge said that he used employment information from the CJA interview form to decide whether to enter judgement on a fine. Others said that they considered the individual items in making the ROR decision, but ignored the recommendation itself, a comment that was substantiated by some of the statistical findings.

factors. Evidently the five judges used the same general criteria, even though some granted ROR significantly more often than others.

Our data were not sufficient to do an analysis of internal (*intra-judge*) consistency among decisions made by the same judge. To address that question fully would require larger numbers of cases for each judge. However, the large Nagelkerke R^2 statistics achieved for each single-judge model suggest a considerable degree of internal consistency. Had these judges made decisions randomly, very little variation could be explained statistically. On the contrary, over 70% of the variation in each single-judge model was explained by the factors delineated above.

The four major research questions of this study were next addressed for the sample of Brooklyn cases. That analysis is presented in Part 2. A discussion of the implications of the findings in both boroughs is reserved for Part 3, which also compares and synthesizes the two borough studies and presents a separate analysis of the prosecutors' bail requests. A *Research Brief* (forthcoming) will conclude the presentation of findings from this project.

VII. REFERENCES

Albonetti, Celesta A. (1989), "Bail and Judicial Discretion in the District of Columbia." *SSR* (Oct.) 74(1):40-47.

Albonetti, C.A., Hauser, R. M., Hagan, J., and Nagel, I. H. (1989), "Criminal Justice Decision Making As a Stratification Process: The Role of Race and Stratification Resources in Pretrial Release. " *Journal of Quantitative Criminology*, 5(1):57-82.

Ares, Charles E., Rankin, Anne, and Sturz, Herbert (1963), "The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Parole." *New York University Law Review,* 38(Jan.):67-95.

Ares, Charles E., and Sturz, Herbert (1962), "Bail and the Indigent Accused." *Crime and Delinquency,* (Jan.):12-20.

Barnes, Carole W., Kingsnorth, Rodney, and Hodgins, Tina (1989), "The 1984 Bail Reform Act: Organizational and Mandated Factors in the Decision to Detain." *Criminal Justice Policy Review* 3(3):257-278.

Bock, E. Wilbur, and Frazier, Charles E. (1984), "The Combined Effects of Offense and Demeanor on Bond Decisions: Basis of Official Typifications." *The Journal of Social Psychology* 123:231-244.

_____(1977), "Official Standards Versus Actual Criteria in Bond Dispositions." *Journal of Criminal Justice* 5:321-328.

Bynum, Tim S. (1982), "Release on Recognizance: Substantive or Superficial Reform?" *Criminology* (May) 20 (1):67-82.

CJA, *Semi-Annual Report: First Half of 2003* (February 2004). New York, NY: CJA.

Clark, John, and Henry, D. Alan (1997), "The Pretrial Release Decision: Judges Need Better Guidance In Deciding What To Do With Arrestees Pending Trial." *Judicature* (Sept.-Oct.) 81(2):76-81.

Daly, Kathleen (1989), "Neither Conflict Nor Labeling Nor Paternalism Will Suffice: Intersections Of Race, Ethnicity, Gender, and Family In Criminal Court Decisions." *Crime and Delinquency,* 35:136-168.

Demuth, Stephen (2003), "Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees." *Criminology* 41, 3 (Aug.):873-907.

Dhami, Mandeep K. (2002), "Do Bail Information Schemes Really Affect Bail Decisions?" *The Howard Journal* 41(3):245-262.

Ebbsen, E.B., and Konecni, V.J. (1975), "Decision making and information integration in the courts: The setting of bail. *Journal of Personality and Social Psychology* 32:805-821.

Eskridge, C. W. (1983), *Pretrial Release Programming: Issues and Trends.* New York: Clark Boardman Company, Ltd.

Fleming, Roy B., Kohfeld, C. W., and Uhlman, Thomas M. (1980), "The Limits of Bail Reform: A Quasi-Experimental Analysis." *Law & Society Review* 14(4):947-976.

Frazier, C. E., Bock, E. W., and Henretta, J. C. (1980), "Pretrial Release and Bail Decisions: The Effects of Legal, Community, and Personal Variables." *Criminology* 18:162-181.

Goldkamp, John S. (1993), "Judicial Responsibility for Pretrial Release Decisionmaking and the Information Role of Pretrial Services." *Federal Probation* 57(1):28-35.

_____ (1987), "Prediction in Criminal Justice Policy Development." pp. 103-150 in Don M. Gottfredson and Michael Tonry, eds., *Prediction and Classification: Criminal Justice Decision Making*. Vol. 9 of *Crime and Justice: A Review of Research*, edited by Michael Tonry and Norval Morris. Chicago: The University of Chicago Press.

_____ (1985), "Danger and Detention: A Second Generation of Bail Reform," *The Journal of Criminal Law & Criminology*, vol. 76:1, pp. 1-74.

_____ (1984), *The Development and Implementation of Bail Guidelines: Highlights and Issues.* (Oct.) US Department of Justice, National Institute of Justice.

_____ (1979), *Two Classes of Accused: A Study of Bail and Detention in American Justice.* Cambridge: Ballinger Publishing Company.

Goldkamp, John S., and Gottfredson, Michael R. (1985), *Policy Guidelines for Bail: An Experiment in Court Reform.* Philadelphia: Temple University Press.

_____ (1979), "Bail Decision Making and Pretrial Detention: Surfacing Judicial Policy." *Law and Human Behavior* 3(4):227-249.

Goldkamp, John S., Gottfredson, Michael R., Jones, Peter R., and Weiland, Doris (1995), *Personal Liberty and Community Safety: Pretrial Release in the Criminal Court.* Plenum Series in Crime and Justice. New York and London: Plenum Publishing Corp.

Gottfredson, Don M. (1999), *Exploring Criminal Justice: An Introduction*. Los Angeles, California: Roxbury Publishing Company.

Gottfredson, Michael R. (1974), "An Empirical Analysis of Pre-trial Release Decisions." *Journal of Criminal Justice*, 2:287-303.

Gottfredson, Michael R., and Gottfredson, Don M. (1988), *Decision Making in Criminal Justice: Toward the Rational Exercise of Discretion*, 2nd ed. New York: Plenum Press.

Jones, Peter R., and Goldkamp, John S. (1991), "Judicial Guidelines for Pretrial Release: Research and Policy Developments in the United States." *Howard Journal of Criminal Justice* (May) 30(2):140-60.

Kruttschnitt, Candace (1984), "Sex and Criminal Court Dispositions: The Unresolved Controversy." *Research in Crime and Delinquency* 21(3):213-232.

Kruttschnitt, Candace, and Green, D. (1984), "The Sex-Sanctioning Issue: Is It History?" *American Sociological Review* 49:541-551.

Lazarsfeld, Paul F. (1974), "An Evaluation of the Pre-Trial Service Agency of the Vera Institute of Justice, Final Report." New York: Vera Institute of Justice.

Lee, Leona (July 1995), *Factors Associated With Arraignment Outcomes in New York City Criminal Courts, 1989*. New York, NY: CJA.

Maxwell, Sheila Royo (1999), "Examining the Congruence Between Predictors of ROR and Failures to Appear." *Journal of Criminal Justice* 27 (2):127-141.

Maxwell, Sheila Royo, and Davis, Jessica S. (1999), "The Salience of Race and Gender in Pretrial Release Decisions: A Comparison Across Multiple Jurisdictions." *Criminal Justice Policy Review* 10(4):491-501.

Nagel, Ilene H. (1983), "The Legal / Extra-Legal Controversy: Judicial Decisions in Pretrial Release." *Law and Society Review* 17 (3):481-515.

Phillips, Mary T. (July 2004), *Factors Influencing Release and Bail Decisions in New York City, Part 3. Cross-Borough Analysis.* New York, NY: CJA.

_____ (May 2002), *Judicial Release/Bail Decisions at Criminal Court Arraignment: Results From A Pilot Project In Manhattan: Final Report.* New York, NY: CJA.

_____ (March 2000), *Release-On-Recognizance Recommendation System for Juvenile Offenders Arraigned in New York City Adult Courts. Part II*. New York, NY: CJA.

_____ (August 1999), *Release-On-Recognizance Recommendation System for Juvenile Offenders Arraigned in New York City Adult Courts. Part I: Validation Study*. New York, NY: CJA.

Phillips, Mary T., and Revere, Elyse J. (July 2004), *Factors Influencing Release and Bail Decisions in New York City, Part 2. Brooklyn.* New York, NY: CJA.

Roth, Jeffrey, and Wice, Paul (1978), "Pretrial Release and Misconduct in the District of Columbia." PROMIS Research Project Publication 16, Washington, DC: Institute for Law and Social Research.

Siddiqi, Qudsia (April 2004), *CJA's New Release-Recommendation System. Research Brief* No. 6. New York, NY: CJA.

_____ (December 2003), *An Examination of the Existing and New Pretrial Release Recommendation Schemes in New York City: A Pre-Implementation Analysis.* New York, NY: CJA.

_____ (June 2003), *Predicting the Likelihood of Pretrial Re-Arrest Among New York City Defendants: An Analysis of the 2001 Dataset.* New York, NY: CJA.

_____ (March 2003), *Predicting the Likelihood of Pretrial Re-Arrest: An Examination of New York City Defendants.* New York, NY: CJA.

_____ (June 2002), *Prediction Of Pretrial Failure to Appear and An Alternative Pretrial Release Risk-Classification Scheme in New York City: A Reassessment Study*. New York, NY: CJA.

_____ (March 2001), *Prediction Of Pretrial Failure to Appear and A New Risk-Classification Scheme in New York City: Translation of the Prediction Model into Policy.* New York, NY: CJA.

_____ (October 2000), *Prediction of Pretrial Failure To Appear and Alternative Pretrial Risk-Classification Schemes in New York City: A Validation Study.* New York, NY: CJA.

_____ (November 1999), *Assessing Risk of Pretrial Failure to Appear in New York City: A Research Summary and Implications for Developing Release-Recommendation Schemes.* New York, NY: CJA.

Steury, Ellen Hochstedler, and Frank, Nancy (1990), "Gender Bias and Pretrial Release: More Pieces of the Puzzle." *Journal of Criminal Justice* 18:417-432.

Stryker, R., Nagel, I. H., and Hagan, J. (1983), "Methodological issues in court research; Pretrial Release Decisions for Federal Defendants." *Sociological Methods and Research* 11:469-500.

Suffet, Frederic (1966), "Bail Setting: A Study of Courtroom Interaction." *Crime and Delinquency* 12 (4):318-331.

Sviridoff, Michele (1986), "Bail Bonds and Cash Alternatives: The Influence of 'Discounts' on Bail-Making in New York City." *The Justice System Journal* 11 (2):131-147.

Varma, Kimberly N. (2002), "Exploring 'Youth' in Court: An Analysis of Decision-Making in Youth Court Bail Hearings." *Canadian Journal of Criminology* (Apr.) 143-164.

EXHIBIT A

Letter of Introduction to Judges in the Study

The letter reproduced here was presented to judges in arraignment parts in Manhattan and Brooklyn to request their cooperation in allowing CJA researchers to observe proceedings from the bench.

This version of the letter was in use from January 2003 until the completion of data collection in March 2003. The letter used at the start of research in September 2002 (not shown) had slightly different wording.

CJA NEW YORK CITY CRIMINAL JUSTICE AGENCY

Jerome E. McElroy
Executive Director

January, 2003

Your Honor:

This letter will introduce project staff members from CJA who are observing arraignments in your courtroom to collect data for a research project funded by the Mayor's Office of the Criminal Justice Coordinator. The research is a study of the factors that influence the bail/release decision at arraignment. We are collecting data from courtroom observations that are not available in computerized databases. We are particularly interested in the bail requests made by prosecutors and defense attorneys, and the reasons they give to support their requests.

We are seeking permission to sit at or near the bench in order to hear the proceedings clearly. It is extremely difficult to hear from seats in the audience, even from the front row. In the interests of collecting more accurate data, we would greatly appreciate it if you would let our observer sit either at the bench or in some other place where it is possible to see and hear the attorneys.

This research project was initiated last fall. Beginning in mid-September, we have been watching arraignments in Manhattan and Brooklyn several times a week, both during the day and at night. Many of the presiding judges have allowed our project staff to sit beside them at the bench, which has been very helpful. Each observation session lasts anywhere from one hour to three or four hours. Only one observer will be in your courtroom at a time, but it may be a different person at different times. We expect to complete our data collection by mid-February 2003, and the report will be completed early this summer.

Please feel free to call or e-mail me or Jerry McElroy, Executive Director of the Agency (646 213-2505), any time if you would like to discuss the research. If you prefer, any of us would be glad to discuss it with you during a break in courtroom proceedings.

Of course, we will also share our findings with you when the project is completed. Just call or drop me a note with your mailing address in order to receive a copy of the final report. We assure you that the anonymity of participating judges will be preserved.

Sincerely yours,

Mary T. Phillips, Ph.D.
Senior Research Analyst and Project Director

Project staff: Raymond Caligiure, Graphics and Production Specialist
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Elizabeth Walton, Senior Research Assistant

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EXHIBIT B

Cover Sheet and Coding Sheet Used for Observation Data Collection

ARRAIGNMENT OBSERVATION DATA COLLECTION COVER SHEET

MANHATTAN BROOKLYN

(circle the correct borough)

Observer (initials):_____

Date of observations: _____

Judge:_____

Court part:_____

Start time: _____

End time: _____

Number of minutes spent observing, this session_____

FROM CALENDAR:

Docket numbers beginning:_____

ADA:_____

Data entered by (initials):_____

Data entry completed on this date:_____

Not for entry in database:

Number of sample cases included under this cover sheet:_____

Observer seated (circle one): 1 = behind bench; 2 = in front of bench; 3= audience, front row; 4= audience, further back

Calendar Observed

docket# (Last 3 digits)	Defendant name	charges (all)	Inter-preter ✔ if yes	Disre-spectful ✔ if yes	# codef	**Bail/ROR/Re** _____ adj. dat | cpart	Bail amount bond or cash = xxxx/xxxx	cash only? ✔ if yes	TOP? ✔ if yes	sample case?
		PL charges 1. 2.		Severity 1. 2.						Op Spotlight ✔ or ?

Court Officer (or judge) mentions: prior or open WO(other than SAP) current SAP warrant open case prior TOP VOCD

Judge's sentence offer:

ADA request (check all that apply):

agrees to ROR Bail Remand
Dollar amount of bail request_____
Surety hearing
Serving grand jury notice (felony 190.50 or misdemeanor 170.20)
agrees to marijuana ACD
Other sentence offer_____
Offer of reduced charges
no offer
TOP

ADA mentioned (check all that apply)

- Defendant's criminal history
  - predicate felon
  - prior violent felony conviction
  - open case
  - prior or current bench warrants
  - extensive criminal history
  - prior YO
  - persistent misdemeanor offender
  - on probation or parole
  - violated a prior TOP or CD or parole/probation
- Strength of evidence/likelihood of conviction
  - incriminating statement (or confession)
  - evidence found (i.e., drugs)
  - eyewitnesses
  - buy and bust case
- "Seriousness" or "severity" of case (or "nature of the charges")
  - quantity of drugs involved
  - severity class of the charge
- Victim mentioned prior(s) involved same CW
  - injury to victim
  - age of victim _____
  - relationship of victim to defendant (Intimate, Acquaintance, Stranger)
- Flight risk
  - No CJA recommendation (insufficient community ties)
  - qualified recommendation (unverified community ties)
  - weak community ties
  - use of aliases, false soc. sec. #, false DOB
  - residence outside NYC
  - unemployed
- Danger to the community
  - violence of crime
  - violent character of defendant
  - has nowhere to go (except back to victim's home)
- Defendant's age_____
- Weapon
  - used in the crime
  - found on defendant or in vicinity but not used
  - type of weapon _____
- Defendant resisted arrest

Ability to hear ADA: **1**= good **2** = medium **3** =poor

Conditions of ROR:

Defense attorney request:

ROR Bail
Dollar amount of bail request _____
(unspecified) "low" or "more reasonable" bail
Dismissal or ACD
Other sentence_____
Serving cross-grand jury notice

Offer rejected

Defense attorney mentioned (check all that apply)

- Defendant's criminal history
  - never arrested before No drug priors
  - no felony conviction (not predicate)
  - no open case
  - no prior or current bench warrants Excuse for WO
  - (relatively) "clean" criminal record
  - priors were not recent
  - YO-eligible
- Weakness of case (unlikelihood of conviction)
  - defendant is innocent/denies charges
  - no evidence (i.e., drugs) found
  - accomplice is more culpable (co-defendant or other)
  - defendant was over-charged
  - faulty police procedure (such as illegal search)
  - CW will not file charges
  - CW instigated the incident
  - defendant was acting in self-defense
  - extenuating circumstances
- Victim was not injured (or not badly)
  - defendant is the one who was injured
  - relationship of victim to def: Intimate/ Acquaintance/ Stranger
- Case is not serious (not likely to result in substantial jail time)
- Defendant is not a flight risk
  - CJA recommends ROR (verified community ties)
  - qualified recommendation (unverified community ties)
  - strong community ties (or verified by attorney)
  - has not used aliases, false soc. sec. #, etc.
  - has family obligations
  - has someone in court
  - is employed, in school, or in program
  - has fulfilled obligations of prob/parole
  - previous ROR
  - family member will guarantee court appearance
  - good character
- Defendant is unable to afford bail
  - unemployed indigent homeless
- Defendant is not a danger to the community
  - crime was not violent
  - defendant does not have a history of violence
  - has place to stay if released (away from victim)
- Defendant's age_____
- Defendant cooperated with police
- Defendant's health: med attention pregnant SSI drug addict
- Defendant has already been held too long

Ability to hear defense atty: **1**= good **2** = medium **3** =poor

APPENDIX A

Independent Variables
Tested in the Analyses

Correlations between the dependent variables and the independent variables listed below were examined. Independent variables with a statistically significant (at $p \leq .05$) correlation with the dependent variable were considered candidates for inclusion in the regression analyses if the coefficient had a strength of .1 or greater. Independent variables that were strongly correlated with each other (.4 or higher, and significant at the .05 level) were not entered together into the same regression analysis. All of the independent variables, except where noted, are coded as yes or no.

I. Independent Variables from the CJA Database

Charge Variables	
Variable name	**Variable description**
ch1sev	Severity class of the top affidavit charge (10 categories). Also, each category was tested as a dummy variable
rchgsev	Severity class of the top affidavit charge (felony, misdemeanor, other)
rchar1ty	Charge type of the top affidavit charge (11 categories). Each category was tested as a dummy variable.
masltchg	PL 120.00 assault-3 (all PL charge variables refer to the top affidavit charge)
topchg	PL 220.39 sale of a controlled substance-3
mdruchg	PL 220.03 possession of a controlled substance-7
mburchg	PL 140.15 criminal trespass-2
larchg	PL 155.25 petit larceny
rchg1asl	PL article 120 assault charge
rchg1bur	PL article 140 burglary charge
rchg1lar	PL article 155 larceny charge
rchg1rob	PL article 160 robbery charge
rchg1the	PL article 165 theft charge
rchg1dru	PL article 220 drug charge
rchg1mar	PL article 221 marijuana charge
vtl511chg	VTL 511 aggravated unlicensed operator charge
ch1vfo	violent felony offender (VFO) flag for most severe affidavit charge
noarrch	number of arrest charges
nofela	number of felony arrest charges
novfoa	number of VFO arrest charges
noaff	number of affidavit charges on calendar
nofelaff	number of felony affidavit charges on calendar
novfoaff	number of VFO affidavit charges on calendar

(Appendix A continued from previous page)

Criminal History Variables	
Variable name	**Variable description**
rfirar	Defendant's first adult arrest (excluding sealed records)
rpfel	Prior felony conviction
pfel	Number of prior felony convictions
rpmis	Prior misdemeanor conviction
pmis	Number of prior misdemeanor convictions
ropen	Open case at time of arrest
open	Number of open cases at time of arrest
rpmj	Prior misdemeanor jail sentence
rpprir	Prior prison sentence
ronparr	On parole
rpwarrr	One or more prior warrants ordered
rpwarrr2	Two or more prior warrants ordered
rpyo	Prior YO adjudication

Defendant Characteristics Variables	
rage1	Defendant's age at time of arrest (15 different recoding schemes for age were tested, grouping different age ranges into categories.)
sexr	Defendant's sex (male/female)
recstamp	CJA recommendation (several different recodings were tested)
rvemp	Defendant is employed, in school, or in training program full time
rvnyc	NYC area address (including Westchester, Nassau, and Suffolk counties)
rvtel	Working telephone in residence
rvlad	Length of time at current address is 18 months or more
rexarr	Expects someone at arraignment
rvlvw	Lives with parent, spouse, common-law spouse, grandparent, or legal guardian

II. Independent Variables From Observations

Judge & Defendant Variables	
Variable name	**Variable description**
judger	arraignment judge (17 different judges); dummy variables for each judge separately were tested in some models.
dis	was defendant's demeanor disrespectful?
rcodef	were there any codefendants arraigned together?
cowo	court officer or judge mentioned a prior or open warrant
coop	court officer or judge mentioned an open case
coptop	court officer or judge mentioned a prior temporary order of protection
covocd	court officer or judge mentioned a violation of a conditional discharge
top	temporary order of protection ordered
opspot	Operation Spotlight case

(Appendix A continued from previous page)

Assistant District Attorney Variables	
Variable name	**Variable description**
adabail	requests bail
adaamt	amount of bail requested in dollars: 6 different interval recoding schemes tested
adaror	consent to ROR
adare	requests remand
adasure	requests surety hearing
adagj	serving Grand Jury notice (felony or misdemeanor)
adaacd	agrees to adjournment contemplating dismissal (ACD)
adared	offers reduced charge
adano	no offer at this time
adatop	requests Temporary Order of Protection (limited or full)
adacrim	defendant's criminal history
adapred	defendant is a predicate felon
adapvfo	defendant has a prior violent felony conviction
adaopen	defendant's open case
adawo	defendant's prior or current bench warrants
adaexten	defendant has an extensive criminal record
adapyo	defendant has a prior YO adjudication
adapm	defendant is a "Persistent Misdemeanor Offender," or a "Persistent Misdemeanant"; or mentions the "Persistent Misdemeanant Alert" on the defendant's rap sheet
adaprob	defendant is on probation or parole
adavio	defendant violated a prior TOP or CD or parole/probation
radacrhi	criminal history (composite of adacrim through adavio)
adascase	case is strong, or mentions the strength of the evidence or the likelihood of conviction
adastate	incriminating statement/confession
adaevid	physical evidence found
adawit	there is an eyewitness
adabb	this is a buy-and-bust case
radaevid	strength of evidence (composite of adascase through adabb)
adaserio	this is a serious case, or requesting bail due to "the nature of the charges"
adaqdrug	quantity of drugs found; or the bail request is based on the quantity of drugs found
adasev	severity class of the charge, or says the charge is "severe"
radaser	seriousness/severity of case (composite of adaserio through adasev)
adavict	victim mentioned
adapvic	defendant has priors involving the same victim
adainjur	victim was injured or was sent to the hospital
rvicage	victim's age mentioned
rrelate	relationship of the victim to the defendant is mentioned
radavic	victim (composite of adavict through rrelate)
adafta	defendant is a flight risk
adacja	defendant is not recommended by CJA
adaunver	defendant has unverified community ties
adaweak	defendant has weak community ties
adaalias	defendant used an alias, a false social security number, or false date of birth

(Appendix A continued from previous page)

Variable name	Variable description
adaoutny	defendant lives outside New York City
adaunemp	defendant is unemployed
radaflt	flight risk (composite of adafta through adaunemp)
adadangr	defendant is a danger to the community
adaviolc	"violence of the crime"
adaviold	defendant has a history of violence; or has a tendency towards violence; or is a violent person
adago	defendant has nowhere to go if released (except back to victim's residence)
radadang	danger to community (composite of adadangr through adago)
radefage	defendant's age mentioned
adaweap	weapon mentioned
adaweapu	weapon was used in the crime
adaweapf	weapon was found but not used
radawep	type of weapon(s) is mentioned
gun	gun was used in the crime
knife	knife was used in the crime
radaweap	weapon (composite of adaweap through knife)
adares	defendant resisted arrest

Defense Attorney Variables	
defror	requests ROR
defacd	requests ACD or dismissal
defxgj	serves cross Grand Jury notice
defrej	plea offer rejected
defcrim	defendant's criminal history
deffirar	defendant's first arrest
defnopd	defendant has no prior drug convictions
defnopf	defendant has no prior felony conviction (is not predicate felon)
defnopen	defendant has no open cases
defnowo	defendant has no prior or current bench warrants
defwoex	offers an excuse for bench warrants
defclean	defendant has a (relatively) "clean" criminal record
defptime	defendant's priors were "a long time ago" or "not recent"
defnprob	defendant is not on probation or parole
defyoel	defendant is YO-eligible
rdefcrhi	criminal history (composite of defcrim through defyoel)
defwcase	case is weak, or the defendant is not likely to be convicted
defng	defendant is not guilty, denies charges
defnevid	no evidence was found, or evidence is poor
defelse	someone else – a codefendant or other accomplice – is more culpable
defover	defendant was over-charged; the charges will (should) be reduced
defproc	police used faulty procedures, such as illegal search
defcwnot	complaining witness will not file charges
defcwins	complaining witness instigated the incident
defsd	defendant was acting in self-defense

(Appendix A continued from previous page)

Variable name	Variable description
defext	extenuating circumstances to explain why defendant should not be treated harshly
rdefweak	weak case (composite of defwcase through defext)
defserio	this is not a serious case (defendant is not facing substantial jail time)
definjv	victim was not injured or was not injured badly
definjd	defendant was the one who was injured
rdefvic	victim (composite of definjv through defnjd)
rdvicrel	defense attorney mentions the relationship of the victim to the defendant
defnofta	defendant is not a flight risk
defcja	defendant is recommended by CJA or has verified community ties
defunver	defendant has unverified community ties (or a qualified recommendation)
defstron	defendant has strong community ties (or verified by attorney)
defcties	defendant has verified ties, strong ties, or a qualified recommendation (composite of defcja through defstron)
defalias	defendant did not use an alias (false social security number; false DOB)
deffam	defendant has family obligations (spouse, children to support, etc.)
definct	defendant has someone in court
defemp	defendant is employed, in school, or in a program
defprob	defendant has fulfilled the obligations of probation or parole; or is currently on probation or parole
defpror	defendant has been granted ROR in the past
defguar	someone will guarantee the defendant's appearance in court
defchar	defendant has good character
rdefflt	not a flight risk (composite of defnofta through defchar)
defnocan	defendant is unable to afford bail (or can't make the bail in the amount requested by the ADA)
defunemp	defendant is unemployed
defindig	defendant is indigent
defhomel	defendant is homeless
rdefbail	unable to afford bail (composite of defunemp through defhomel)
defdangr	defendant is not a danger to the community
defviolc	crime was not violent
defviold	defendant has no history of violence; no violent tendencies; not a violent person
defgo	defendant has a place to stay if released (other than victim's residence)
rdefdang	not a danger (composite of defdangr through defgo)
rdefdage	defendant's age mentioned
defcoop	defendant cooperated with police (or turned himself in)
defheal	health problem
defill	defendant is ill, needs medical attention
defpreg	defendant is pregnant
defssi	defendant is on SSI (Supplemental Social Security Income)
defdaddi	defendant is a drug addict
rdefhlth	health (composite of defheal through defdaddi)
defheld	defendant has already been held too long

APPENDIX B

JUDICIAL ORIENTATION (MANHATTAN)

The construction of a set of variables to measure judicial orientation is described in this appendix. Four variables were computed to provide measures of a judge's relative strictness in making ROR and bail-setting decisions, separately for non-felony and felony cases.

I. Judicial Orientation to ROR

Overall ROR rates for all judges in the sample were compared to the ROR rate for each judge, separately for non-felony and felony cases. Judges whose ROR rate was more than 5 percent below the average were classified as having a Strict ROR Orientation, and those whose ROR rate was more than 5 percent above the average were classified as having a Lenient ROR Orientation. All others were classified as having a Medium ROR Orientation.

TABLE B-1
ROR Orientation of Judges for Non-Felony and Felony Cases: Manhattan

Non-Felony		Felony	
Average ROR rate = 77%		**Average ROR rate = 42%**	
Strict (71% or lower)		**Strict (36% or lower)**	
Judge # 2	70%	Judge # 1	13%
Judge # 7	69%	Judge # 3	35%
Judge # 11	60%	Judge # 11	21%
Judge # 13	61%		
Judge # 14	57%		
Medium (72% through 82%)		**Medium (37% through 47%)**	
Judge # 3	80%	Judge # 2	43%
Judge # 4	72%	Judge # 5	42%
Judge # 6	78%	Judge # 6	39%
Judge # 8	80%	Judge # 7	47%
Judge # 9	81%	Judge # 10	37%
Judge # 10	78%	Judge # 13	42%
Judge # 12	72%	Judge # 17	45%
Judge # 15	82%		
Lenient (83% or higher)		**Lenient (48% or higher)**	
Judge # 1	100%	Judge # 4	50%
Judge # 5	83%	Judge # 8	50%
Judge # 16	89%	Judge # 9	50%
Judge # 17	85%	Judge # 12	54%
		Judge # 14	57%
		Judge # 15	50%
		Judge # 16	100%

Underlining indicates judges who were consistent in orientation regardless of the severity level of the arraignment charge. Judge #11 was strict for both non-felony and felony cases; Judge #16 was lenient for both. Two judges (#6 and #10) had a medium orientation for both severity levels. Most judges, however, had a different orientation for non-felony as compared to felony cases. Judge #14 was strict for non-felonies and lenient for felonies, whereas Judge #1 was the most lenient for non-felonies and the strictest for felonies.

II. Judicial Orientation to Bail Setting

The overall median bail amounts set by all judges in the sample were compared to the median bail set by each judge, separately for non-felony and felony cases. Judges whose median bail was at least 40 percent below the overall median were classified as having a Low Bail Orientation. Judges whose median bail was at least 40 percent above the overall median were classified as having a High Bail Orientation. All others were classified as having a Medium Bail Orientation.

TABLE B-2
Bail Orientation of Judges for Non-Felony and Felony Cases: Manhattan

Non-Felony	Felony
Overall Median Bail = $500	**Overall Median Bail = $3,500**
Low (median less than $300)	**Low (median less than $2,100)**
Judge # 15 $250	Judge # 8 $2,000
	Judge # 12 $2,000
	Judge # 14 $2,000
Medium (median $300 through $700)	**Medium (median $2,100 through $4,900)**
Judge # 3 $700	Judge # 1 $3,500
Judge # 4 $500	Judge # 3 $3,250
Judge # 5 $500	Judge # 4 $2,500
Judge # 7 $500	Judge # 5 $2,500
Judge # 8 $425	Judge # 6 $2,250
Judge # 9 $500	Judge # 7 $2,750
Judge # 10 $500	Judge # 9 $2,500
Judge # 11 $625	Judge # 10 $3,000
Judge # 14 $500	Judge # 13 $3,500
Judge # 17 $625	Judge # 17 $4,250
High (median greater than $700)	**High (median greater than $4,900)**
Judge # 2 $750	Judge # 2 $5,000
Judge # 6 $750	Judge # 11 $10,000
Judge # 12 $750	Judge # 15 $25,000
Judge # 13 $1,500	

Underlining indicates judges who were consistent in orientation regardless of the severity level of the arraignment charge. Judge #2 set relatively high bail for both non-felony and felony cases; seven judges set bail in the medium range for both severity levels. The majority, however, had a different orientation for non-felony as compared to felony cases. Judge #15 was the most extreme example of this, as she or he set the lowest bail for non-felonies and the highest, by far, for felonies. Judge #12, on the other hand, set relatively high bail for non-felony defendants, and relatively low bail for felonies.

III. Summary Orientation by Judge

Table B-3 displays the classification of each judge on all four dimensions of orientation. Only one judge, #10, had the same orientation across all dimensions; this judge was consistently medium. Judges #2 and #11 were consistently strict (low ROR rate and high bail amount) on as many as three out of the four dimensions. None was lenient (high ROR rate and low bail amount) on more than two dimensions. This made it impossible to construct an all-purpose scale to rate judges on their overall strictness. This also reduced the likelihood that a dummy variable for any individual judge would be a significant predictor for either ROR or bail amount for models that included both non-felony and felony cases, since effects in opposite directions would cancel each other out.

One hypothesis had been that a judge who released a large proportion of defendants might tend to set bail relatively high for those who were deemed unsuitable for ROR. This suggestion was supported by the data only for Judge #15, and then only for felony cases. Others with high (lenient) ROR rates set bail in the medium range (#5, #16 and #17 for non-felony cases; #4 and #9 for felony cases) or they set low bail (#8, #12, #14, all for felony cases).

TABLE B-3
Summary Orientation Classifications by Judge: Manhattan

Judge	ROR /non-felony	ROR /felony	Bail /non-felony	Bail /felony
#1	Lenient	Strict	*	Medium
#2	**Strict**	Medium	**High**	**High**
#3	Medium	Strict	Medium	Medium
#4	Medium	Lenient	Medium	Medium
#5	Lenient	Medium	Medium	Medium
#6	Medium	Medium	High	Medium
#7	Strict	Medium	Medium	Medium
#8	Medium	Lenient	Medium	Low
#9	Medium	Lenient	Medium	Medium
#10	**Medium**	**Medium**	**Medium**	**Medium**
#11	**Strict**	**Strict**	Medium	**High**
#12	Medium	Lenient	High	Low
#13	Strict	Medium	High	Medium
#14	Strict	Lenient	Medium	Low
#15	Medium	Lenient	Low	High
#16	Lenient	Lenient	*	*
#17	Lenient	Medium	Medium	Medium

*Zero or only one case. See Table 3 (page 26) for the number and ROR rate and Table 7 (page 39) for the number and median bail amount for each judge by severity level.

APPENDIX C
ADDITIONAL LOGISTIC REGRESSION MODELS OF THE ROR DECISION

Table C-1
ROR Model for Felony Cases: Manhattan (N = 440)

Independent Variables	Odds Ratio	Standardized β
Charge variables		
Number of felony charges entering arraignment (1 or 2+)	.29	–.18***
Offense type = Theft Intangible (most severe charge entering arraignment) (0=no; 1=yes)	5.29	.14**
At the end of Step 1: Nagelkerke R^2 = .09		
Criminal History variables		
First arrest (0=no; 1=yes)	8.81	.31***
Two or more prior bench warrants (0=no; 1=yes)	.39	–.12*
At the end of Step 2: Nagelkerke R^2 = .45 (change = +.36)		
CJA Interview variable		
Recommended for ROR: verified community ties (0=no; 1=yes)	3.63	.16***
At the end of Step 3: Nagelkerke R^2 = .48 (change = +.03)		
Judicial Variability		
ROR orientation in felony cases (1=lenient; 2=medium; 3=strict)	.58	–.11*
At the end of Step 4: Nagelkerke R^2 = .49 (change = +.01)		
Assistant District Attorney variables from courtroom observations		
Bail request (1=consent to ROR; 2=$250–2,499; 3=$2,500–9,999; 4=$10,000–49,999; 5=$50,000+; 6=remand)	.17	–.56***
ADA argument: predicate felon (0=no; 1=yes)	.22	–.19**
At the end of Step 5: Nagelkerke R^2 = .67 (change = +.18)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

Table C-2
ROR Model for First Arrest† Cases: Manhattan (N = 265)

Independent Variables	Odds Ratio	Standardized β
Charge variable from the CJA database		
Number of charges entering arraignment (1, 2 or more charges)	.27	–.17*
At the end of Step 1: Nagelkerke R^2 = .03		
Defendant variable from courtroom observations		
Defendant was disrespectful (0=no; 1=yes)	.01	–.14*
At the end of Step 2: Nagelkerke R^2 = .06 (change = +.03)		
Assistant District Attorney variables from courtroom observations		
Bail request (1=consent to ROR; 2=$250-2,499; 3=$2,500–9,999; 4=$10,000–49,999; 5=$50,000 or higher; 6=remand)	.09	–.72***
ADA argument: No CJA recommendation CJA (0=no; 1=yes)	.13	–.17**
ADA argument: Strength of case (0=no; 1=yes)	.16	–.14*
At the end of Step 3: Nagelkerke R^2 = .64 (change = +.58)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

† Defendants in this subsample could have a prior arrest that was sealed.

Table C-3
ROR Model for Drug Cases: Manhattan (N = 265)

Independent Variables	Odds Ratio	Standardized β
Charge variable		
Number of charges entering arraignment (1=1; 2=2 or more)	.20	–.23***
At the end of Step 1: Nagelkerke R^2 = .08		
Criminal History variable		
One or more open cases (0=no; 1=yes)	.37	–.13*
At the end of Step 2: Nagelkerke R^2 = .16 (change = +.08)		
Defense Attorney variable from courtroom observations		
Defense argument: Community ties (0=no; 1=yes)	6.83	.26***
At the end of Step 3: Nagelkerke R^2 = .19 (change = +.03)		
Assistant District Attorney variables from courtroom observations		
Bail request (1=consent to ROR; 2=$250-1,999; 3=$2,000–9,999; 4=$10,000–49,999; 5=$50,000 or higher; 6=remand)	.11	–.69***
ADA argument: Criminal history, composite (0=no; 1=yes)	.05	–.40***
At the end of Step 4: Nagelkerke R^2 = .68 (change = +.49)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

Table C-4
ROR Model for Judge #3: Manhattan (N = 119)

Independent Variables	Odds Ratio	Standardized β
Criminal History variables		
First arrest (0=no; 1=yes)	58.02	.40***
One or more prior misdemeanor jail sentences (0=no; 1=yes)	.13	–.18**
At the end of Step 1: Nagelkerke R^2 = .37		
Assistant District attorney variable from courtroom observations		
Bail request (recode #3) (1=consent to ROR; 2=$250-1,999; 3=$2,000–9,999; 4=$10,000–49,999; 5=$50,000 or higher; 6=remand)	.05	–.70***
At the end of Step 2: Nagelkerke R^2 = .77 (change = +.40)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

Table C-5
ROR Model for Judge #5: Manhattan (N = 91)

Independent Variables	Odds Ratio	Standardized β
Criminal History variable One or more prior bench warrants (0=no; 1=yes) **At the end of Step 1: Nagelkerke R^2 = .17**	.03	–.45***
Assistant District Attorney variable from courtroom observations Bail request (1=consent to ROR; 2=$250–749; 3=$750–2,499; 4=$2,500– 4,999; 5=$5,000-9,999; 6=$10,000-49,999; 7=$50,000 or higher; 8=remand) **At the end of Step 2: Nagelkerke R^2 = .71 (change = +.54)**	.23	–.80***

***p ≤ .001, ** p ≤ .01, * p ≤ .05

Table C-6
ROR Model for Judge #10: Manhattan (N = 65)

Independent Variables	Odds Ratio	Standardized β
Criminal history variable One or more prior bench warrants (0=no; 1=yes) **At the end of Step 1: Nagelkerke R^2 = .38**	.01	–.54***
Assistant District Attorney variable from courtroom observations Bail request (1=consent to ROR; 2=$250–1,999; 3=$2,000–9,999; 4=$10,000– 49,999; 5=$50,000 or higher; 6=remand) **At the end of Step 2: Nagelkerke R^2 = .74 (change = +.36)**	.04	–.79**

***p ≤ .001, ** p ≤ .01, * p ≤ .05

Table C-7
ROR Model for Judge #17: Manhattan (N = 70)

Independent Variables	Odds Ratio	Standardized β
Criminal History variable One or more prior felony convictions (0=no; 1=yes) **At the end of Step 1: Nagelkerke R^2 = .21**	.07	–.30*
Assistant District Attorney variable from courtroom observations Bail request (1=consent to ROR; 2=$150-999; 3=$1,000–4,999; 4=$5,000-9,999; 5=$10,000–49,999; 6=$50,000 or higher; 7=remand) ADA argument: Strength of evidence, composite (0=no; 1=yes) **At the end of Step 2: Nagelkerke R^2 = .75 (change = +.54)**	.16 .13	–.72*** –.25*

***p ≤ .001, ** p ≤ .01, * p ≤ .05

APPENDIX D

ADDITIONAL OLS REGRESSION MODELS OF THE AMOUNT OF BAIL SET AT CRIMINAL COURT ARRAIGNMENT

Table D-1

Bail Amount Model for Felony Cases: Manhattan (N=255)†

(Only defendants for whom bail was set are included in the analysis)

Independent Variables	β	Standardized β
Charge and criminal history variables		
Number of Violent Felony Offense arrest charges (1 – 4)	3,358	.13***
Adjusted R^2 at the end of Step 1 = .14		
Judicial Variability		
Bail orientation in non-felony cases (1=low, 2=medium, 3=high)	4,931	.10**
Adjusted R^2 at the end of Step 2 = .17 (change = +.03)		
Defense Attorney variables from courtroom observations		
Requests ROR (0=no, 1=yes)	–3,380	–.07*
Defense argument: "clean" criminal record (0=no, 1=yes)	3,158	.05
Adjusted R^2 at the end of Step 3 = .21 (change = +.04)		
Assistant District Attorney variables from courtroom observations		
Bail request (in $1,000 increments)	187	.80***
ADA argument: Strength of evidence, composite (0=no, 1=yes)	3,073	.06*
Final adjusted R^2 for the model = .78 (change = +.57)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

†Excluding 20 cases with a Class-A felony as the most severe charge entering arraignment.

Table D-2
Bail Amount Model for Cases Excluding First Arrests: Manhattan (N=304)††

(Only defendants for whom bail was set are included in the analysis)

Independent Variables	β	Standardized β
Charge and criminal history variables		
Severity class of the most severe charge entering arraignment (1=Violation *through* 10=Class A felony)	854	.20***
Number of VFO arrest charges (1 – 4)	1,229	.11**
Adjusted R^2 at the end of Step 1 = .16		
Judicial Variability		
Judge #6 (0=no, 1=yes)	3,266	.09**
Judge #11 (0=no, 1=yes)	10,325	.26***
Judge #13 (0=no, 1=yes)	3,150	.11**
Judge #15 (0=no, 1=yes)	4,254	.09*
Adjusted R^2 at the end of Step 2 = .33 (change = +.17)		
Defense Attorney variables from courtroom observations		
Requests ROR (0=no, 1=yes)	–813	–.05
Adjusted R^2 at the end of Step 3 = .33 (change = +<.01)		
Assistant District Attorney variables from courtroom observations		
Bail request (in $1,000 increments)	70	.56***
ADA argument: Seriousness of the case, composite (0=no, 1=yes)	3,809	.11**
ADA argument: Weapon mentioned, composite (0=no, 1=yes)	2,258	.08*
Final adjusted R^2 for the model = .64 (change = +.31)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

††Excluding nine cases with bail amounts set equal to or higher than $100,000.

Table D-3
Bail Amount Model for Drug Cases: Manhattan (N=139)†††

(Only defendants for whom bail was set are included in the analysis)

Independent Variables	β	Standardized β
Charge and criminal history variables		
Severity class of the most severe charge entering arraignment (1=Violation *through* 10=Class A felony)	1,046	.16**
Adjusted R^2 at the end of Step 1 = .10		
Judicial Variability		
Judge #11 (0=no, 1=yes)	14,228	.31***
Adjusted R^2 at the end of Step 2 = .18 (change = +.08)		
Assistant District Attorney variables from courtroom observations		
Bail request (in $1,000 increments)	72	.65***
ADA argument: Seriousness of the case, composite (0=no, 1=yes)	4,613	.14**
Final adjusted R^2 for the model = .67 (change = +.49)		

***p ≤ .001, ** p ≤ .01, * p ≤ .05

†††Excluding seven cases with bail amounts set equal to or higher than $100,000.