BEHIND THE CURTAIN:
A QUANTITATIVE EXAMINATION OF FACTORS CONSIDERED BY JUDICIAL COMMISSIONERS IN RUTHERFORD COUNTY, TENNESSEE IN DETERMINING THE PRESENCE OF RISK OF FLIGHT AND AMOUNT OF BAIL

by

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I dedicate this thesis to all those souls who are sitting in local county jails because they are too poor to post bail.

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ABSTRACT

Rutherford County, Tennessee was sued in 2008 for setting bail that was based only on the charged offense and based on an antiquated preset bail schedule. As part of a settlement agreement, judicial commissioners promised to stop the practice and set bail only after considering *all* the factors predictive of nonappearance per state law and to keep a record of questions and responses. A random sample of questionnaires from 2012 was selected and various parametric and nonparametric statistical tests were conducted to check on the promise. Results indicated that Rutherford County judicial commissioners continue to set bail based primarily on the charged offense and consistent with the preset bail schedule previously used, in violation of the settlement agreement. Possible reasons for why this practice continues despite assurances to the contrary and recommendations for the future are made.

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I. INTRODUCTION

"The greatest dangers to liberty lurk in insidious
encroachments by men of zeal, well-meaning, but without understanding"
Olmstead v. United States (1928).

Bail, as it is presently practiced in Tennessee and many other states, is the process where a magistrate determines whether a person arrested is a flight risk or if the person poses a danger to the community if released pretrial. If such a risk is identified, the magistrate then imposes conditions (home confinement, ankle bracelet, phone reporting, to name a few) directed at addressing and minimizing the risk. Conditions may also include the payment of money, or "bail".

The idea of posting bail in exchange for the release of an accused prior to trial likely originated in England sometime before 1300 C.E. Understanding the origin of the system of bail, its evolution and its modern manifestations, is critical to understanding a system currently in place that is ripe for corruption and abuse. In this thesis, I examine deposition transcripts involving quasi-judicial officials from various Tennessee counties to illustrate the misapplication of the very purpose behind the concept of bail as originally designed and ultimately adopted by the framers of the U.S. Constitution. This initial scrutiny of public officials' understanding of bail and how they actually apply the concept to the lives of real people will serve to set the contours of an issue that affects thousands of Tennesseans every day. How it is that the original purposes behind bail metastasized into the system that exists today in Tennessee will be illustrated through a discussion of the history of bail and the internal manifestations of its application in real life scenarios. Using quantitative analysis of questionnaires administered in the process of setting bail in one Tennessee county, I will then refine the issues and contrast the

findings with what judicial authorities who set bail claim to do. More specifically, I will examine which factors asked by judicial commissioners in Rutherford County, Tennessee have a relationship to any determined risk of flight and to the amount of bail that is presumably the least amount necessary to address this risk. Discussion of my findings, limitations of the study, recommendations and policy issues will then follow.

II. BAIL GENERALLY

Bail, as practiced under the current American system of jurisprudence, usually involves the payment of money to secure the appearance of a person arrested and charged with a crime. Absent this monetary yoke, it is generally argued, a person accused of a criminal offense and released prior to trial would have little incentive to voluntarily appear for a trial where conviction is possible and incarceration likely. The money payment to secure the person's return serves the purpose, in part, of assuring he or she appears for trial and sentencing if convicted.

In the days of pre-Norman England, a person accused of a crime and jailed could wait quite a long time before a magistrate could arrive and consider the charges. The practice of pretrial release likely originated by the local sheriff releasing people in his jail to lighten the burden of upkeep, however light the burden may have been in relative terms. This practice was formalized in England through the Statute of Westminster in 1275 (3 Edw. I, Ch. 15 (1275)) by King Edward I [1] (Wisotsky 1970; Yale Law Journal

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[1] Otherwise referred to as the First Statute of Westminster, Chapter 15, it read in relevant part, "... shall henceforth be released by sufficient surety (for which the sheriff shall be answerable) and this without any payment. And if sheriffs or others release on bail anyone who is not replevisable, if he be sheriff, constable or other bailiff of fee who has the keeping of the prisoners, and is convicted of this, let him lose the fee and the bailiwick forever. And if an undersheriff, constable, or bailiff' of him who has this fee for keeping the prisoners has done this without his lord's wish, let him or any other bailiff who is not of fee be imprisoned for three years and make fine at the king's pleasure. And if any one detains prisoners who

1961; United *States v Edwards* 1981) that set conditions for pretrial release and qualifications for sureties who were tasked with assuring or guaranteeing the presence of the accused, usually individuals of means or landowners. If the person did not appear to answer the charges, the landowner had to forfeit some property (Yale Law Journal 1961).

The idea of bail for pretrial release was imbedded in the American judicial system through the Eighth Amendment to the U.S. Constitution which reads that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." This clause was "adopted almost verbatim from section nine of the Virginia Declaration of Rights of 1776, which in turn was derived from the English Bill of Rights of 1689" (*United States v Edwards* 1981:1326). The idea of prohibiting excessive bail came from abuses of the English crown and as a "specific remedy for judicial abuse of the bail procedure as otherwise established by law ... " (*United States v Edwards* 1981:1327).

A. Bail Under Tennessee State And Federal Law.

The most frequent process by which a person is introduced to the criminal justice system begins with an arrest by a police officer. The police officer handcuffs the arrestee, transports the person to the local jail, and hands over control of the individual to corrections officers who run the jail so they can complete the booking process (fingerprinting and booking photo). This scenario is sometimes interrupted by the police officer taking the arrestee to a location for a custodial interrogation, but that usually only

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are replevisable after the prisoner has offered sufficient surety he shall be liable to heavy amercement by the king. And if he exacts payment for releasing him he shall restore double the amount to the prisoner and also be liable to heavy amercement by the king" (Rothwell 1996).

occurs where a confession is needed to complete the investigation or where the police suspect the individual may be involved in other crimes. While the booking process is completed, the arresting officer will usually type out an affidavit in support of probable cause summarizing the facts of the crime which is then presented to an impartial magistrate, such as a judicial commissioner, for a determination if probable cause exists and the issuance of an arrest warrant if it does. The arrestee is then presented to the magistrate for the purpose of determining risk of flight or danger if released pretrial. If a risk of flight or danger exists, the magistrate then considers what conditions, if any, including monetary bail, will ensure the appearance in court of the defendant and which will ensure the safety of the community. The general process is illustrated in Figure 1.

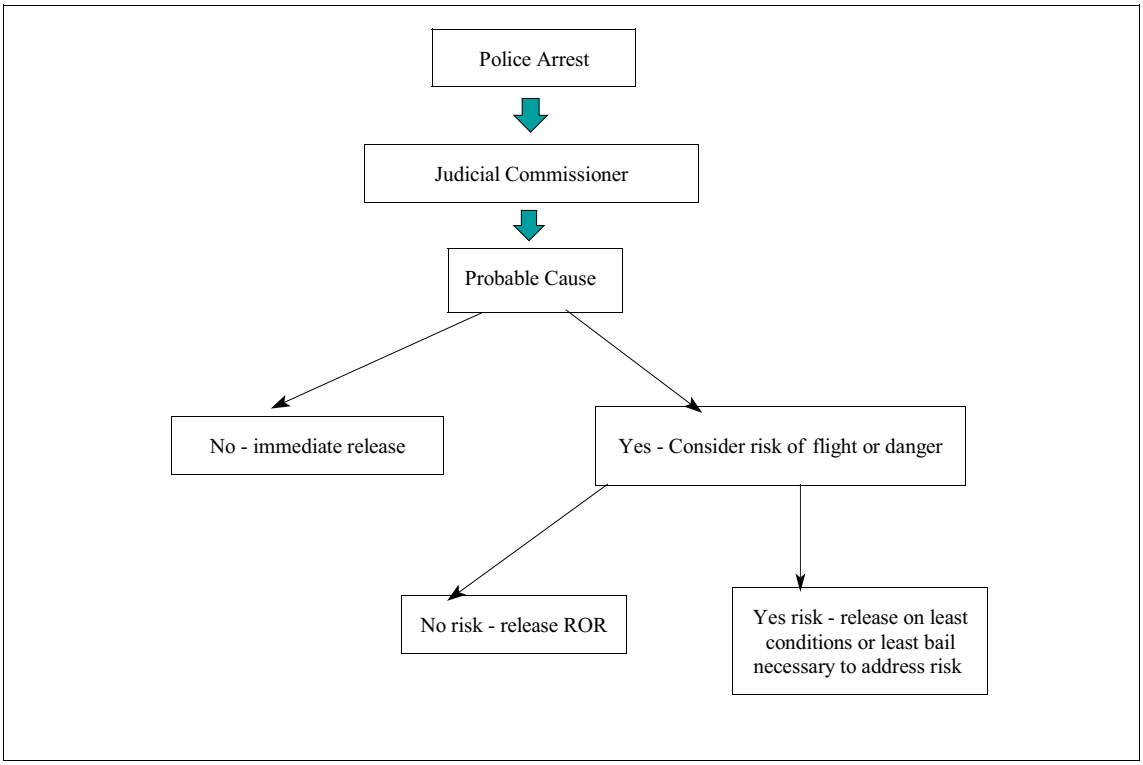

Figure 1: Process of arrest to setting of bail

Bail is excessive when it is set at a figure higher than an amount *reasonably* calculated to fulfill the purpose of assuring *that* defendant's presence at trial (*Stack v Boyle* 1951). The language of the Eighth Amendment does not guarantee bail (*Carlson v Landon* 1951) but only proscribes the impediment to pretrial liberty by imposing "excessive" bail. “Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of *that* defendant” (*Stack v Boyle* 1951:5) (emphasis added). Thus, the determination of whether an individual is subject to pretrial release on bail and the character of that bail is to be an *individualized* process. This provision of the Bill of Rights prohibiting excessive bail was made applicable to the various states through the Fourteenth Amendment (*Schilb v Kuebel* 1971; *Kennedy v Louisiana* 2008).

In Tennessee, all offenses other than capital offenses are subject to bail. [2] When a defendant is arrested, he or she is “entitled to be admitted to bail by the committing magistrate ... ” [3] Bail should be determined by taking into consideration those conditions which may *reasonably* answer the question of whether an individual will appear “as required ... ” [4] These *reasonable* conditions under the Tennessee Code include employment status and history, financial condition, family ties and relationships, reputation, character and mental condition, prior criminal record including prior releases

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[2] Tennessee Code Annotated (hereinafter “T.C.A.”) Title 40, Chapter 11, Section 102. A “capital offense” is one punishable by death. Tennessee Code Annotated is the Tennessee official reporter of legislation enacted into law and codified into categories divided by title, chapter, and section.

[3] T.C.A. 40-11-115. A “committing magistrate” includes “judicial commissioners” who are generally hired by county commissions and given the duty of determining probable cause to arrest, signing mittimuses and admitting to bail.

[4] T.C.A. 40-11-115.

on recognizance or bail, the identity of responsible members of the community who will vouch for the defendant's reliability, the nature of the offense, probability of conviction and likely sentence (insofar as these factors are relevant to the risk of nonappearance), and, finally, any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear. [5] If an individual is not eligible for release upon recognizance after consideration of these factors, the bail set must be the "least onerous .... reasonably likely to assure the defendant's appearance in court." [6] But release on recognizance is the default and bail may be required only "absent a showing that conditions on a release on recognizance will reasonably assure the appearance of the defendant as required ... " [7] If the defendant is not released on recognizance, the same considerations must be taken into account as those used to determine release on recognizance for establishing the proper conditions of release or bail. [8]

When the Tennessee Code factors which are presumptively predictive of a person's likelihood of appearance if released pretrial was first passed in 1978, the legislative record, such as it is, fails to show whether state legislators or the governor who signed the bill considered any scientific studies to support these factors. [9] It is likely that the factors were merely copied from the federal Bail Reform Act of 1966, codified at

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[5] T.C.A. 40-11-118.

[6] T.C.A. 40-11-116(a).

[7] T.C.A. 40-11-117.

[8] T.C.A. 40-11-118(b).

[9] 1978 Public Acts, Chapter 506, §18. The act was later amended in 1992, 1996, and again in 2010. The legislative record found at www.tn.gov/sos/acts only goes back to 1997.

18 United States Code (U.S.C.) §§3146-3152, which was proposed as model legislation for the states (Harris 1983). Before that, it is possible that the concept originated from the English Habeas Corpus Act of 1679 (Stephen 1883). Regardless of its actual origin, historical documents such as the Habeas Corpus Act show that the concern was a lengthy pretrial detention of an accused by the sheriff and the focus, upon review by a court, was not only the charged offense but also the character of the accused.

> An act for the better securing the liberty of the subject, and for prevention of imprisonments beyond the seas. WHEREAS great delays have been used by sheriffs, gaolers and other officers, to whose custody, any of the King's subjects have been committed for criminal or supposed criminal matters, in making returns of writs of habeas corpus to them directed ..., whereby many of the King's subjects have been and hereafter may be long detained in prison, in such cases where by law they are bailable, to their great charges and vexation. ..... the said lord chancellor or lord keeper, or such justice or baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the **quality of the prisoner and nature of the offense**, for his or their appearance in the court ... and then shall certify the said writ with the return thereof, and the said recognizance or recognizances unto the said court where such appearance is to be made ... (Lewis 2003) (emphasis added).

In Tennessee, judicial commissioners, who are usually the first quasi-judicial officials to see a person after they have been arrested, purportedly apply these factors by questioning individuals or reviewing their criminal record for other information such as prior failures to appear and prior crimes. To follow the black letter of the law, this should be a two-step process. The first step is to consider all the statutory factors to see if the arrested person cannot be treated as one presumed to be eligible for release on his or her own recognizance because of some perceived (and prognosticated) risk of flight. If an individual is not eligible for release on recognizance, the judicial commissioner must

then reconsider the statutory factors to reach a decision on the least onerous conditions of release or bail that would address this risk and ensure the person's appearance in court. However, the custom is to merely set a monetary bail that is intended to be a deterrent to flee given the fact that the bail amount is forfeited if any condition of release is violated, such as failing to appear on a scheduled court date or committing another crime while on pretrial release. Since the monetary bail is designed to be the least amount of bail "reasonably calculated" to ensure the defendant's appearance at trial, it is, in effect, a proxy (expressed in terms of dollars) of whatever likelihood to flee was uncovered by the judicial commissioner. This process seems fairly straightforward and somewhat mathematical in nature. Yet, review of the procedures implemented by various Tennessee county judicial commissioners shows a wholly inadequate understanding or objective basis underlying the process and very little, if any, standardization across counties. Indeed, until January 1, 2010, judicial commissioners were not even required by law to undergo any training whatsoever on what was required of them or how to implement the process uniformly.

B. Extent Of Problem In Application Of Bail In Tennessee Counties.

The inability of county judicial commissioners to cogently explain the basic concepts of social bonding or deterrence or the application of the bail-setting process under the standards dictated by law becomes apparent when compelled to explain the process. In Macon County, Tennessee, one of two judicial commissioners appointed by the County Commission (Phillip Spears Sr.) was asked whether, for example, length of

residence in the community was more likely or less likely to cause a person to fail to appear in court on a criminal charge. [10]

> Q. Okay. Explain to me how a person's residence is related to whether or not they should be released ROR [on their own recognizance].
>
> A. Well, if – if there's somebody that's been here a month out of this year. They – if they've been here one month versus somebody that has been here ten years. That – that would be one way I would make part of the decision.
>
> Q. And why would that make a difference?
>
> A. Well, somebody that's been here ten years, you'd think well, they've got an established residence, and you know, they – they've been a resident here for ten years, and somebody that's just been here just a month they may be – they may have come here from somewhere else, running from trouble or something, and they may be somebody that's not going to stay here.
>
> Q. So the person that's been here for only a year is more likely, less likely or just as likely not to appear for court as the person that has been here for ten years?
>
> A. I would think that a person that's been here for a year would be more likely to – to not appear in court than the one that had been here ten years.
>
> Q. Do you have any evidence to – to back up this opinion?
>
> A. I've never had it – I've – I've never had a problem with a – a – which I don't – I don't really know if who has run and who has not run. Who – you know, who has and who has not.
>
> Q. So you're not aware of any statistical studies or anything showing who flees and who doesn't?
>
> A. No.

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[10] These deposition transcripts are of public officials subpoenaed to testify under oath pursuant to lawsuits filed against the various counties. Excerpts of these transcripts are either filed in the respective cases and available through PACER (Public Access to Court Electronic Records, www.pacer.gov) or are available in their entirety as public records with the county through the Tennessee Open Records Act. Unless otherwise noted, I am the person asking the questions as the attorney of record for the various plaintiffs.

> Q. So from where do you get that someone who has been here one year is more likely to flee than someone that has been here ten years?
>
> A. Well, I -- I feel like it using common sense. A person's got ten -- ten years established into a residence here that -- that he's -- to, you know, to stay here than a person that -- that hasn't been here over a month or so.
>
> Q. So it's just common sense?
>
> A. That's what I think it is.
>
> Q. How about employment? In regards to the different things that you said, you mentioned when you consider bail or ROR, do you consider employment status?
>
> A. Yes.
>
> Q. How does employment status have anything to do with whether or not someone is likely to flee or not?
>
> A. Well, if they've got a job established within the county, more than likely, they won't just up and leave -- you know.
>
> Q. And where do you get that from?
>
> A. Where do I get it from?
>
> Q. Yes, sir.
>
> A. I just -- it's just an assumption that I made on my own, I guess.
>
> Q. Is that common sense, also?
>
> A. Yes. (*Holman v Macon County* 2010).

The uncertainty of the responses reveals an attempt by this judicial commissioner to explain, post-hoc, a process that he has never been asked to defend before. On occasion, Mr. Spears Sr. would use circular arguments and deny making statements uttered mere minutes before.

Q. Okay. Someone who is unemployed in your mind is more likely to flee than someone who is employed; is that right?

A. Not necessarily be more likely to flee, but they – they would be more likely to – a person that's employed would be more likely to have a tie to the – to the community or to the state or and not up and leave than someone that – someone that's not employed could – could up and leave.

Q. Do – do you see the term "up and leave" different from the term "likely to flee"?

A. About the same.

Q. Okay. So that's when I say one is more likely to flee than the other and you say, no, they're whatever term you use, we're talking about the same thing, right?

A. Yes.

Q. Okay. To summarize, someone who is unemployed is more likely to flee or not appear in court than someone who is employed; is that right?

A. I feel like they would be.

Q. Okay. What if someone just lost their job yesterday? Does – does that take into account –

A. I would take it into consideration.

Q. Do you ask them how long they've been unemployed if they tell you they're not employed?

A. If they're not employed?

Q. Yes, sir.

A. How long they've been employed?

Q. Yes, sir.

A. If they're not employed I would ask them if they – if they were employed.

Q. If they're not employed, do you ask them how long they have been unemployed?

A. No.

Q. But didn't you just say if they were unemployed as of yesterday that that would be something that you should take into account?

A. That – that was your question, yes.

Q. So if it's something you should take into account, why don't you ask them that?

A. I didn't – I didn't say that it's something that should be taken into account, did I? (*Holman v Macon County* 2010).

Mr. Spears Sr. also had quite a difficult time explaining the apparent ubiquity of bail set by the charged offense or how the amount of bail would deter someone from fleeing.

Q. If we were to look at all the public intoxication charges that were presented to you for consideration of bail and find that 95 percent of them, they were all exactly $250, can you explain why all those people would have the exact bail amount?

A. No, I wouldn't – I wouldn't – I wouldn't be – I – I would – that – that's what was determined for their bail.

Q. So every one of those people had pretty much the exact same likelihood to flee?

A. Probably most of them paid cash bond out.

Q. Okay. But as far as their likelihood to flee, because that $250 represents the assurance that you feel is needed to make sure ... they don't flee. Is that right?

A. They – the $250 represents the bail. Now, if – if you – if – if you're saying that's an assurance to keep them from fleeing, like we talked about earlier, yes.

Q. Is that your understanding of what that $250 represents?

A. Well, it the – the a bond or a bail and bond is a surety that person is going to come back to court.

Q. Okay.

A. Now, whatever you make it from that point.

Q. Okay. So that $250 represents whatever amount you felt was necessary to assure that person comes back to court, right?

A. If – if I signed it $250, that's what I signed it to.

Q. So that $250 represents some level of your gut feeling of how likely that person is to flee?

A. Yes.

Q. Right. And that $250 is supposed to keep them from fleeing, right?

A. Not necessarily $250. If I was going to run, I wouldn't worry about $250.

Q. So why would you set a bail at $250, then?

A. Well, that's just what I thought needed to be set.

Q. But if the $250 is not going to keep them from running, what purpose does that $250 serve?

A. Just the assurity [sic].

Q. Okay. But you don't think it will necessarily keep them from running?

A. Probably not, if they're going to.

* * *

Q. Okay. But a $250 bail, just so that we understand each other, a $250 bail represents your "assurity" [sic] that they will come for court, but that $250 will not necessarily keep them from running. Is that right?

A. If I – if I was going to run it wouldn't keep me from running. (*Holman v Macon County* 2010).

The second Macon County judicial commissioner, Phillip Spears Jr., who was the son of Phillip Spears Sr., had this to say regarding some of the statutory factors to consider as predictive of likelihood to not appear for court:

> Q. Okay. So if a person is -- has a mental illness are they more likely, less likely or the same likely to flee as someone who does not have a mental illness?
>
> A. I guess same likely.
>
> Q. So if the -- if the presence of a mental illness does not increase or decrease their likelihood to flee as compared to a person that does not have a mental illness, why do you ask about mental illness?
>
> A. I don't know why (*Holman v Macon County* 2010).

As a source for his opinions, he similarly cited "common knowledge."

> Q. So we're just talking about employment. How does employment, whether they're unemployed or employed, help you decide whether that person is likely to flee?
>
> A. I guess if they don't have a job -- I mean -- you know, they wouldn't really have anything to stay around the community or you know, and they might [be] more likely to leave.
>
> Q. Okay. So someone who is unemployed is more likely to flee than someone who is employed, right?
>
> A. I feel like that. Yes, sir.
>
> Q. Okay. Likewise or -- or contrarily, if someone is employed they are less likely to flee than someone who's unemployed, right?
>
> A. That's common knowledge. Yes, sir (*Holman v Macon County* 2010).

In Trousdale County, Tennessee, the answers were substantially the same. Trousdale County Judicial Commissioner Charles Puckett, who is a barber by trade, testified about how length of residence was related to likelihood to appear in court:

> A. The longer a person has resided at a particular residence, the more likely they are to appear in court.
>
> Q. All right. What leads you to believe that?

> A. If they own their house and they have been making payments on that house, I personally do not feel that they would leave the jail, go home, pack their bags, get in their car and run.
>
> Q. Under any circumstances or is that just a broad general –
>
> A. That's just a generalization. I'm sure there are some circumstances out there that would prompt someone to do that.
>
> Q. And do you base that on any kind of evidence or statistical study or anything?
>
> A. No, sir, I'm not a statistician.
>
> Q. Do you ever follow up, for example, if someone comes and is arrested for failure to appear, do you ever enquire into what their life conditions were to see if you can make a connection between those and their failing to appear?
>
> A. No, sir, I do not (*Tate v Trousdale County* 2009).

Mr. Puckett, like Mr. Spears, had a very difficult time explaining the deterrent effect of monetary bail.

> Q. Just generally speaking, if you set the bond at $1,000, somebody has to pay a bondsman $100, right?
>
> A. Uh-huh [yes].
>
> Q. Ten percent?
>
> A. Yes, sir.
>
> Q. If you set the bond at 5,000, they have to pay a bondsman 500, right?
>
> A. Yes, sir.
>
> Q. Okay. So how does that 100, how does that 500 ... ensure that they're going to appear for court if they're out that money no matter what they do?
>
> A. I don't know (*Tate v Trousdale County* 2009).

In Wilson County, Tennessee, the amount of bail was literally pulled out of thin air by one judicial commissioner, Charles Churchwell, who was refreshingly honest about how he set bail.

Q. So, in this hypothetical the suspect is not in custody?

A. Right.

Q. How do you know how much to set the bond for?

A. Whatever the crime is. If it's a DUI then, you know, until -- until he gets there and I talk to him, I'll set the bond at maybe $1,000, $1,500. Then when he gets there and talks to me, I talk to him. And if I believe his story, then I'll lower the bond. You know, if I believe it's not as bad as the officer made it appear, then I'll lower the bond.

Q. Do you differentiate between DUI 1st/DUI 2nd?

A. Yes.

Q. So, DUI 1st would be in the range of 1,000 to 1,500?

A. Yes.

Q. DUI 2nd would be what?

A. 3,000.

Q. How about DUI 3rd?

A. Three times 1,500.

Q. 4,500?

A. Yes, sir.

Q. How about a DUI 4th?

A. Four times 1,500.

Q. 6,000?

A. Yes. If it goes above that, then I drop back to 1,000.

Q. To a DUI 5th you go back to 1,000?

A. Yes, sir, because his bond's getting up there. I think it's a little bit ridiculous.

Q. So, you would consider above 6,000 for a DUI – regardless of the sequential number that it is, you would consider that ridiculous?

A. Yes, sir, on two reasons. Because first place, the victim should have never had got that many without something being done in the system.

Q. You mean the suspect?

A. Yes, sir.

Q. How about for public intoxication?

A. Sir, I -- it varies from 750 to 1,000.

Q. How about for simple assault?

A. Simple assault, I usually -- 3,000, 2- to 3,000.

Q. How about aggravated assault?

A. 4 to 5. There again, though, after I talk to the victim.

Q. The suspect?

A. Suspect.

Q. We'll get there.

A. After I talk to the suspect, then I determine whether to lower it or not.

Q. Okay. Well, we'll get to that point. Right now we're talking about the suspect is not in custody yet.

A. Yes.

Q. Where do you get these numbers from?

A. **Out of my head, sir**.

Q. Is it based on in part where you've learned through other judicial commissioners?

A. No, sir.

Q. Just completely on your own?

A. Yes.

Q. **Out of thin air?**

A. **Yes, sir** (*Staley v Wilson County* 2006) (emphasis added).

The circular or confusing nature of these responses illustrate an attempt by the various judicial commissioners to explain a process they apparently do not understand in light of their perceived expectations related to a lawsuit where they have been accused of setting bail in an unlawful manner. It should be noted that all these judicial commissioners knew well ahead of time the topic we were going to discuss and some were coached by their defense attorneys on the kinds of questions they could expect. As Scott and Lyman (1968:46) theorized, these explanations are attempts at bridging the gap between their actions and the accusation of wrongdoing that are "employed whenever an action is subjected to a valuative inquiry." "Accounts" are "likely to be invoked when a person is accused of having done something that is 'bad, wrong, inept, unwelcome, or in some other of the numerous possible ways, untoward'" (Scott and Lyman 1968:47). These depositions of judicial commissioners in Tennessee further reveal a bail-setting system within the state that is manned by individuals who not only have an inadequate understanding of the purpose behind bail or how it should be implemented but who also may ask the required statutory questions without an adequate understanding as to why these factors are even considered. But, more importantly, they reveal another aspect that is worthy of examination, which is, the possibility that bail is broadly based on some rule of thumb such as that process described by Mr. Churchwell above. Such a "rule of

thumb" process is hardly based on an *individual's* likelihood to appear for court if released pretrial. Rather, it appears to be based on a broad-based assumption that all individuals charged under the same offense will have an equal likelihood of nonappearance without regard to any other socioeconomic factors that are mandated by law or supported by social science literature as predictive of flight (VanNostrand and Keebler 2009).

Indeed, a review of bail overall reveals a striking similarity across counties and a process that appears on its face to be consistent with that described by Mr. Churchwell in Wilson County. Contrary to Mr. Churchwell's assurance that he did not derive his figures from other judicial commissioners but only from his own head or thin air, his figures for bail associated with those charged with driving under the influence is amazingly on par with the average in other counties. For example, an examination of 2482 bail determinations for Davidson County, Tennessee over the period of April 16, 2009 to April 15, 2010 showed the following descriptives for the offense of Driving Under the Influence (DUI) where a monetary bail was actually set.

Table 1. Descriptive Statistics for DUI Bail in Davidson County, TN, 04-16-2009 to 04-15-2010

	DUI1	DUI2	DUI3	DUI4
Mean	$2,302.56	$3,660.41	$5,285.71	$12,913.04
Median	$2,000.00	$2,500.00	$5,000.00	$10,000.00
Std. Deviation	$2,001.259	$2,697.958	$4,179.409	$10,754.485
Skewness	9.043	3.220	3.141	2.076
Kurtosis	175.943	17.242	14.178	6.784
Range	$49,900	$24,000	$29,500	$57,000
Minimum	$100	$1,000	$500	$3,000
Maximum	$50,000	$25,000	$30,000	$60,000

Note: DUI1, DUI2, etc. denotes the charge for driving under the influence under T.C.A. 55-10-401. For each subsequent conviction of DUI, the minimum mandatory period of incarceration is increased. T.C.A. 55-10-403.

Recalling Wilson County Judicial Commissioner Charles Churchwell's illustration of how he would progressively increase bail for DUI offenses depending on the number of previous DUI charges (DUI 1st, DUI 2nd , DUI 3rd, and DUI 4th), this table suggests the same process is involved in setting bail in Davidson County. The average bail for DUI offenses increases progressively from about $2300 to $3700 to $5300 to $13,000 for DUI1 DUI2, DUI3, and DUI4 respectively.

This also suggests that the charged offense – in this example, DUI – may have a large effect on the monetary value of bail in each particular case. Why is this important? First, if the bail in any particular case is set via some rule of thumb based on the charged offense alone rather than the statutory factors predictive of a person's likelihood to flee, then the bail is not being set on an *individual's* likelihood to not appear for court if released as required by the U.S. Supreme Court. Second, if the charged offense is the sole or even the primary variable associated with the monetary value of bail or even if bail should be demanded (rather than release on one's own recognizance), then arresting police officers would have an inordinate influence on the ability of a person to be released from jail by inflating the charged offense or stacking charges. Since at the preliminary stages of the judicial process where the setting of bail takes place does not involve the determination of guilt or innocence, an inflated charge alone could unduly affect a person's liberty in the short term, even if ultimately acquitted of the charges. Of course, this has long term implications in that pretrial detention affects a person's ability to actively participate in their defense and may even cause other negative outcomes such as loss of employment (due to absence) and family problems. Third, if an individual remains incarcerated pending trial in spite of all other factors involved in predicting the

likelihood to flee pointing to a low flight risk, then this contributes needlessly to jail overcrowding and the associated public expense. Finally, if bail is set by a rule of thumb or based solely or predominately on the charged offense, then bail is set in contravention of the explicit instructions set out in state law. Judicial commissioners are sworn to uphold the law and a willful or a grossly negligent failure to follow the law may point to even broader societal problems not unlike the problems in 17th century England that ultimately called for a written prohibition against excessive bail through the English Bill of Rights of 1689.

An astonishing regularity of bail amounts for certain given offenses also points to the possibility that the charged offense is predominate. For example, out of 2120 arrests for Public Intoxication (PI) in Davidson County for the same time period as Table 1 above, 98.7% of the bail amounts were for *exactly* $500 or $1000. Raybin (1985:123) has noticed this trend as well by concluding that it is the "nature of the crime [that] appears to be the major consideration in present bond hearings". A "rule of thumb" bail amount for the charge of Public Intoxication also illustrates another phenomena that implicates societal concerns. Those typically arrested for public intoxication and detained due to an inability to post a preset bond suffer through a "never ending cycle of jail, release without treatment, and jail again" (Fagan and Mauss 1978:232). Although $500 may not seem like a great obstacle to securing a person's release, especially in light of the ability to hire a commercial bail bondsman to secure the bail for a 10% fee, it still amounts to a barrier that many chronic drinkers are unable to afford repetitively. A preset bail amount based solely on the charged offense of Public Intoxication allows an unscrupulous police officer to arrest someone for having a beer on their back porch, as an examination of

public records confirms to happen on occasion, and is guaranteed that the person arrested, albeit innocent of the charge, will be forced to either pay $500 to the sheriff and forego the opportunity cost of that money or pay a bail bondsman $50 each and every time. Several cycles of this misadventure could very well bankrupt one of limited means.

III. THEORETICAL FRAMEWORK OF BAIL

It is useful to briefly explore the theoretical framework behind the concept of bail before we can hope to begin to examine it for efficacy and reform. While the original concept was rooted in the idea of pre-payment to the victim of crime in case the perpetrator fled the community without making compensation, it has since evolved into a system of formal social control of those accused of crime. This is not to say that those who were responsible for the evolution did so through a thoughtful, deliberative process that fully considered theoretical foundations. Moreover, there are powerful forces resisting any change away from a money-based system. Commercial bail bondsman can stand to generate a very comfortable income with little overhead or risk from the thousands of routine $1000 bails set for even minor crimes by judicial commissioners across the state.

The current money-based system is derived from the idea that if you fail to appear for a scheduled court hearing, you will forfeit your bail. The factors that are legislatively mandated to be considered in determining the presence of flight risk similarly have social bonding characteristics (Gottfredson and Hirschi 1990). Ties to the community, employment, financial conditions, persons who can vouch for one's reputation – are all measures of how connected the arrestee is to geographically based informal social control groups. As several judicial commissioners have testified, it is just "common

sense" that someone who owns a home, is employed in the region, or has other ties to the community are less likely to give all that up and flee the jurisdiction than someone who would suffer no loss if they left and failed to appear.

Social bond theory maintains that individuals with strong social bonds to work, family, and other institutions are less likely to engage in criminal behavior (Hirschi 1969; Laub, Sampson, and Sweeten 2011). In the context of risk of flight, judicial commissioners seem to adopt the assumption of control theories that everyone has a "relatively constant motivation for deviance... [and] will engage in deviance if some form of restraint is not present" (Gottfredson 2011). Accordingly, everyone inherently possesses a risk of nonappearance (deviance) and will fail to show up for court hearings unless some restraint is imposed. By placing sanctions for disobeying the conditions of pretrial release (showing up for court), the current system of bail establishes a "stake in conformity" (Toby 1957).

The stake, however, is not attenuation of the social bonds but rather loss of money. In the past, the individual family member who guaranteed or assured the accused's appearance at trial would suffer loss if the person failed to appear, including possibly suffering incarceration in place of the accused. Presumably, this would bring shame or guilt on the accused by his or her social connections for unjustly imposing the punishment on them and such informal severing of relationships provoked by the formal legal system would have some deterrent effect (Zimring and Hawkins 1973). However, the prevailing use of commercial bail bondsmen who will pay the bail for the accused has interfered with the stake of losing social bonds, so the deterrent factor represented by money bail is questionable. Indeed, even if the deterrent effect of losing money was

strong enough to influence the rational choice to appear or not appear for court, by paying a non-refundable 10% fee to the commercial bail bondsman, the loss of money is complete at the time of the transaction. In other words, the accused no longer faces a true risk of losing any money because whether he shows up for court or not, he will never recoup the 10% fee, and the bail bondsman will suffer the forfeiture of the bond, not the accused. On the other hand, some bail bondsman require family members to collateralize the risk by signing promissory notes to repay any forfeited bond or offering a lien on real property.

In effect, then, the use of commercial bail bondsmen has shifted the "stake in conformity" in the form of lost social bonds from imposition by a judicial authority to a third party, for-profit enterprise. In the end, money-based bail systems are no longer really designed to ensure payment of a fine, compensation to victims, or deter nonappearance but are rather designed to encourage commercial enterprises to absorb the risk of nonappearance by ensuring a profit mechanism. As we shall see, setting a bail of $250 for a misdemeanor offense where the defendant can be released from pretrial confinement upon payment of a nonrefundable $25 to a commercial enterprise who will, in turn, promise to pay the $250 in the event of his nonappearance, can hardly be seen as truly deterrent. However, multiple instances of $250 can serve as sufficient profit motive for a commercial bail bonding company to invest the energy in ensuring the defendant's appearance for a mere $25 (Toborg 1983) and incurring the expense of a private fugitive service in the event of the occasional flight.

IV. CRITIQUE OF BAIL IN THE LITERATURE

The American system of bail has been criticized as far back as 1922 (Goldkamp 1980) with the publication of *Criminal Justice in Cleveland* (Pound and Frankfurter 1922). (See also, Beeley 1927; Harris 1983; Morse and Beattie [1932]1974.) But Foote (1954) was the first to undertake a comprehensive examination of the effect of bail practices on defendants charged with a crime (Goldkamp 1980:179). In that comprehensive study of the system of bail in Philadelphia, Foote found that the large number of bail determinations necessitated the development of a system of setting bail that was applied easily and rapidly. Courts at the time had allowed consideration of such factors as the nature and circumstances of the offense charged, the weight of the evidence against the arrestee, the financial ability of the accused to post bail, his general character, the character of the surety posting bail on behalf of the accused, whether the defendant had been a fugitive from justice before or was a fugitive at the time of arrest, and even whether it would be difficult to leave the jurisdiction (such as being arrested on the island of Hawaii). But Foote (1954:1034-35) noted that all these factors, except for the nature of the offense charged, "vary so greatly in each case that they cannot be reduced to a rule of general applicability".

Nonetheless, due to the large number of cases in which bail needed to be set, the result was a system that used the nature of the offense as the basic standard for deciding how much to demand for bail. One federal judge noted that the reliance on the nature of the offense “seems to apply an abstract generality as the norm of decision, without consideration of the particular facts and circumstances disclosed” in the particular case (Foote 1954:1035). The prevalence of relying principally on the charged offense for

determining an amount to set as bail begged the question of where this amount came from.

The rationale behind this approach to bail-setting was that as the severity of the crime and possible punishment increased, the defendant, having more to fear, would become more likely to jump bail. Even if this was well founded, there was no indication of how the range of bail "usually fixed" for a given offense was established, and within Philadelphia there was a striking difference between the bail usually set in state courts and that usually set in federal courts for comparable offenses (Foote 1954:1035). Foote's study was followed up by Goldkamp (1980) in which approximately 8300 defendants who arrived for initial appearances between August and November of 1975 were examined. Goldkamp also interviewed Philadelphia bail judges and observed first appearances as part of the study. Despite substantial reform and improvements to the bail system after Foote's (1954) study, Goldkamp revealed that "the nature of the criminal charge still played the dominant role in bail determinations" (Goldkamp 1980: 188). The inability to predict the future was another significant conclusion that illustrated an ongoing recognition of the inherent problem in bail determinations. Although not entirely applicable today, Goldkamp concluded that "[t]o date no research has been able to isolate reliable predictors of either flight or dangerousness using criminal charge, past record, community ties, or any other defendant data presently available" (Goldkamp 1980:191).

Goldkamp (1983) again sought to examine predictive factors related to a person's likelihood to flee. This study also concluded that the charged offense was the predominate factor and that predictive skills were poor on the part of judges who considered the issue of bail. Importantly, "factors found to be related to pretrial failure,

however weakly, have not been found to be those necessarily relied upon by judges in making bail decisions; rather, factors actually employed in bail decisions may ignore or contradict those found to be noteworthy in predictive studies" (Goldkamp 1983:1561). The predilection to rely on the charged offense as the predominate, if not the sole, factor to consider in setting bail has led to what can be called "bond schedules" where magistrates simply look at a list of charges with preset bond amounts (Wisotsky 1970). This was the admitted practice in Rutherford County, Tennessee, which maintained such a “bond schedule” and followed it almost religiously (see Appendix A).

Maxwell (1999) published a comprehensive study of predictive factors using standard data obtained of arrested individuals and compiled in the National Pretrial Reporting Program of the Bureau of Justice Statistics, U.S. Department of Justice. The purpose was to compare the characteristics of those considered for bail and the characteristics that were predictors of failure to appear. Some reverse patterns were recognized between the characteristics that judges believed were predictive of good or low flight risk and how those same characteristics actually related to higher flight risk after analysis. For example, women and those charged with property offenses were most likely to be released on their own recognizance (ROR) by judges, suggesting their belief that they were low risk, yet had higher failure to appear rates, suggesting an incorrect assumption by the judges.

In 2009, one of the largest studies of pretrial risk assessment was conducted using data from the Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, which included all those charged with federal criminal offenses between October 1, 2001 and September 30, 2007 (VanNostrand and Keebler 2009). In that study,

eight factors were isolated as significantly related to likelihood to appear in court if released or be a danger to society:

1. Pending felony charges
2. Prior felony convictions
3. Prior felony violent convictions
4. Prior failures to appear
5. Employment status
6. Residence status
7. Primary charge category
8. Primary charge type (VanNostrand and Keebler 2009:40). [11]

As a result of VanNostrand and Keebler's analysis, the U.S. Office of Probation implemented a program to standardize the process of bail determination and promulgated a template for judges to follow. This step-by-step process, also implemented in form by the State of Virginia and converted to a computer program, serves to address the inability of judicial officers to accurately predict a person's likelihood to flee and to address the apparent difficulty by those making bail determinations that causes a default to using only the charged offense.

My research project will examine which factors, if any, considered by Rutherford County judicial commissioners have a relationship to a determination of risk of nonappearance and to the amount of bail set.

V. DATA COLLECTION AND METHODS

The statutory factors considered in determining whether someone is eligible for ROR release or, conversely, for determining the least amount of bail necessary to ensure appearance for court, are rather broad and encompass many characteristics of the human condition that occur in society as a whole; for example, employment status, mental

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[11] Factors 5 and 6 are consistent with social bonding theory.

health, medical issues, and relationships in the community. While these factors codified in Tennessee law are not completely congruent with the statistically significant factors enumerated by VanNostrand and Keebler (2009), they are nonetheless the law in Tennessee and are required to be considered by judicial commissioners before setting bail.

On August 18, 2008, Rutherford County, Tennessee, a semi-rural county just south of Nashville-Davidson County, was sued in federal court for implementing a preset bail schedule that was used by county judicial commissioners to determine bail (*Jones v Rutherford County* 2008). The schedule (Appendix A) was based solely on the charged offense and did not allow for consideration of any other factors required by state law or found to be empirically predictive of a risk of nonappearance. Indicative of how long this preset bail schedule had been in effect, it contained charges such as "vagrancy" and "homosexual acts", both of which had been held to be unconstitutional by federal courts several decades before (*Kirkwood v Ellington* 1969 (vagrancy); *Bowers v. Hardwick* 1986 (sodomy)). [12] The county settled the case in December, 2008 and agreed, in part, to distribute a policy manual that included the applicable law regarding the setting of bail, to set conditions of bail "only after consideration of the factors enumerated in Tenn. Code Ann. 40-11-115 in a face-to-face or video conference discussion with the accused" and to provide access to bail determinations to the extent allowed by the Tennessee Open

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[12] Vagrancy statutes existed under English common law and were resurrected after the civil war during the Reconstruction period as a means to "force blacks to sign labor agreements ... " and providing a mechanism by which those convicted of the offense could be hired out (Cohen 1976:47). Tennessee passed its vagrancy statute in 1875 which allowed judges to impose fines of $5 to $25 and imprisonment for ten days to a year (Cohen 1976:48). A fine of $25 was not an insubstantial amount in 1875 to someone convicted of "having no apparent means of subsistence" or "strolling through the country without any visible means of support."

Records Act. [13] The policy manual, promulgated in December, 2008, included a document called a "mittimus" that contained space for judicial commissioners to annotate the responses arrestees gave to the listed questions (Appendix B). Thus, these questionnaires provide a ready dataset of factors actually considered by judicial commissioners, whether a risk of nonappearance was found as a result of the responses, and the amount of bail set to address the risk. The mittimuses are printed in prebound sets of approximately 200 per set and sequentially numbered on the bottom left-hand side using a Bates numbering system and archived at the Rutherford County Sheriff's Department.

A. Variable Creation and Coding

I submitted an Open Records request to the Sheriff of Rutherford County for inspection of all mittimuses for the 2012 calendar year. Examining an entire calendar year allows for examination of any variations based on month or season and would allow a comparison with other counties. In my experience of examining tens of thousands of public documents, those counties that archive such documents usually do so by calendar month and calendar year. In total, Calendar Year 2012 consisted of individual bail determinations Bates numbered 108001 to 121400 or 13,399 pages divided among approximately 67 bound volumes. These mittimuses provided a close facsimile of the statutory factors as shown in Table 2 below. [14]

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[13] The original signed settlement agreement is in my possession and available for review upon request or through a public records request with Rutherford County.

[14] The name of the person arrested was redacted although the record of his or her arrest is public information and readily obtainable. At the bottom of the page, the juridical commissioner noted what appears to be the person's medical history ("Hx") and prescriptions ("Rx"). While the Tennessee Code does require consideration of medical or mental health conditions, it does not require noting the medical history.

Table 2: Comparison of Statutory Factors and Questionnaire Factors.

Tennessee Statutory Factors	Rutherford County Questionnaire Factors
Employment status and history	Employment status, history and financial condition.
Financial Condition	Incorporated into employment questionnaire.
Family Ties and Relationships	Family ties and relationships.
Reputation	Reputation, character and mental conditions.
Character	Incorporated into reputation question.
Mental Condition	Incorporated into reputation question.
Prior Criminal Record including prior releases on bail	Prior criminal record, including prior releases on recognizance or bail.
Nature of Offense	The nature of the offense and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of nonappearance.
Probability of Conviction and Likely Sentence	Incorporated into nature of offense question.
Other Factors	Any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear.

Although the questions are not exact when compared with the statutory factors, for purposes of this study the questionnaires provide enough information to examine any relationship between factors considered (even if they differ from state law) and the determination that there is a need for bail because of a risk of flight and the bail amount necessary. Out of the numerous factors to be considered on the questionnaires, many are routinely ignored or merely summarized by judicial commissioners and often considered by the judicial commissioners as merely positive or negative (presence or absence of

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Noting this information on this form by the county judicial commissioners is possibly a violation of the Health Insurance Portability and Accountability Act (HIPAA). Moreover, there is no indication that the judicial commissioners are trained on how to consider mental health in terms of likelihood to flee nor does it appear to be a factor they actually consider.

factor). For example, to the question of "[r]eputation, character and mental conditions", the sample questionnaire in Appendix B shows a response of "Anxiety." This note does not directly explain whether the subject has a reputation or character of anxiety or whether this was a perceived mental condition. For the question involving the "nature of the offense", the example merely shows a zero. Again, it cannot be ascertained whether this means there is no nature to the offense, whether there is zero probability of conviction, or whether the likely sentence was zero, or a combination of all three. Some written responses were unuseable, such as length of residence noting "all his life" without any reference to when the subject was born. This lack of uniformity and completeness is typical throughout the broader set of questionnaires and likely a result of lack of training in protocol for proper notations. Nonetheless, most notations do provide enough information to create nominal variables. A thorough examination of thousands of pages within the entire 2012 set showed a consistent trend as far as how commissioners noted responses by arrestees. Finally, where arrestees were charged with more than one offense, commissioners would set bail for each individual charge on the same mittimus. Thus, my independent and dependent variables and their coding are as shown in Table 3 below. [15]

The charged offenses were categorized in five general groups denoting whether the offense was a crime against a person, property, administration of justice, public health, or related to motor vehicles. The Tennessee Penal Code, generally contained under Tennessee Code Titles 39 and 55 of the Tennessee Code, categorizes most offenses

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[15] Unfortunately, the race, gender or age of those arrested was not noted in the questionnaires and so variations in bail on these variables could not be tested.

according to these groups as noted in Table 3. [16] An additional categorical variable was created out of these general groups (Classification of Crime), and the top seven charged offenses (in terms of frequency) were likewise incorporated into a categorical variable (Selected Crimes).

A random number generator (www.random.org) was used to randomly select mittimuses based on the Bates stamp. The sample size was initially selected with the goal of achieving a minimum *N* per group of independent variable equal to 30 or greater (Warner 2008:161). Power analysis shows that for nominal variables, a sample size of 26 per group is sufficient assuming $\alpha = .05$, 1 df, statistical power at 80%, and large effect size (Cohen 1992:158). A random sample of 200 mittimuses resulted in a total of 272 observations of bail determinations per charged offense. (Recall that each mittimus may have more than one charged offense included in the analysis of bail.) Charges of Violation of Probation (VOP), Capias [17], Fugitive, "Return for past action", "Viol Vacc", Violation of Community Corrections (VOCC), Violation of Bond (VOB) and "BOB"

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[16] Title 39, Chapter 15, contains crimes against the family. These include crimes such as failure to pay child support, abortion, bigamy and incest, and other crimes involving children. There were no charges in the sample that belonged to this subclass of crime. Additionally, one of the top seven charged offenses (in terms of frequency) was Underage Consumption of Alcohol which is codified under Title 1, Chapter 3 (T.C.A. 1-3-113). Since this offense is most like the offenses involving possession of controlled substances and consumption of alcohol in public (Crimes involving Public Health), underage drinking was coded as a Crime involving Public Health.

[17] "Capias" is either a bench warrant issued by a criminal court judge or an arrest warrant issued after a grand jury returns an indictment. As such, the bail/bond is usually preset.

Table 3: Independent and Dependent Variable Coding

Independent Variables	Coding
Charged offense	String, denoting the charge as written and abbreviated where possible. E.g., "DUI" (Driving under the influence), "DA" (Domestic Assault), etc.
Crime involving Persons (Title 39, Chapter 13)	0 = No 1 = Yes
Crime involving Property (Title 39, Chapter 14)	0 = No 1 = Yes
Crime involving Administration of Justice (Title 39, Chapter 16)	0 = No 1 = Yes
Crime involving Public Health (Tile 39, Chapter 17)	0 = No 1 = Yes
Crime involving Motor Vehicle (Title 55)	0 = No 1 = Yes
Classification of Crime	1 = Crime involving Persons 2 = Crime involving Property 3 = Crime involving Administration of Justice 4 = Crime involving Public Health 5 = Crime involving Motor Vehicle
Selected Crimes	1 = Domestic Assault (DA) 2 = Driving Under the Influence (DUI) 3 = Implied Consent (IC) 4 = Public Intoxication (PI) 5 = Theft < $500 (Theft500) 6 = Theft > $1000 (Theft1000) 7 = Underage Consumption of Alcohol (UA)
Month of bail decision	1 = Jan, 2 = Feb, 3 = Mar, etc.
Length of residence	Numeric in years
Employed	0 = No 1 = Yes
Family ties	0 = No 1 = Yes
Prior criminal record	0 = No 1 = Yes
Dependent Variables	**Coding**
Risk of flight present	0 = No 1 = Yes
Bail Amount	Numeric, in dollars

were eliminated from the sample because they were either bail amounts set by another judge who issued the warrant, were not related to a known charge in the Tennessee Penal Code, or did not contain any responses to the questions on the form. As this is a study of

the factors considered (or not considered) by county judicial commissioners, bail determinations set by another judge are not within the scope of this study. Similarly, all offenses of Failure to Appear (FTA) had their bail set at a flat $5000, with any second offense FTA's set at double that amount, or $10,000. Therefore, these offenses obviously failed to consider any other factors and are not conducive to any type of statistical analysis. Taking into account missing entries and those mittimuses excluded for the above reasons, the total number of bail determinations was 164 with selected crimes totaling 78 and the other independent variables reporting at least 139 observations. This should be sufficient for even a medium effect size (Cohen 1992:158).

B. Descriptive Characteristics of Variables

A total of 51 different charged offenses were tabulated with subsequent charges of the same offense treated as a separate offense because that is how it was treated by the commissioners. For example, a third offense Driving Under the Influence charge (DUI3) was noted and treated as a separate offense compared to a first offense of DUI. [18] When offenses are examined according to the subgroup within the Penal Code, the data shows that alcohol- and drug-related offenses account for a plurality of cases. Crimes against the public health consist of public intoxication, simple possession, or possession with intent to resell controlled substances, underage drinking (predominately by university students), and possession of open containers of alcohol, among others. When combined with the 29 offenses under the vehicle code involving alcohol (DUI), alcohol- and drug-

[18] A third offense DUI means that the individual had been convicted of DUI twice before the instant arrest. The police officer typically runs a background check on a new arrest before presenting the case to the judicial commissioner for probable cause determination and setting of bail and will indicate prior offenses in the affidavit in support of arrest.

related offenses accounted for a majority of all the offenses in the sample (53.6%). Further, if we assume that the primary reason for revoking or suspending a driver's license is pursuant to an underlying conviction for driving under the influence, then adding all offenses of Driving with a Revoked License or Suspended License increases the total of alcohol- or drug-related offenses to 61.5% of all offenses in the sample.

Among the total study sample, 54% were employed in some capacity, 69% had some family ties to the area, and 67% had a prior criminal record. Yet, judicial commissioners found a risk of flight existed in 98% of the cases with the average bail equal to $1806 (SD = 1512). Out of the originally examined 200 mittimuses, 15 (or 7.5%) were for Failure to Appear in court on an underlying charge for which they were granted bail. This is consistent with the findings of VanNostrand and Keebler (2009:12) who found a failure rate of 7% overall in their extensive national sample.

The amount of bail set for those cases where a risk of flight was found (less the excluded cases) has a significant positive skew (2.205). An examination of the cases causing the skew shows essentially two cases, one for aggravated burglary ($10,000 bail) and one for Prescription Fraud2 ($12,000 bail) that stand out. There is only one case of Prescription Fraud in the entire sample and that case does not reveal any explanation for why the bail was set so high. Although the arrestee only reported four weeks of residence in the area, there were scores of other cases that either did not report any length of residence in the area or less than six months and did not have their bail set as high even if other factors, such as involving controlled substances or weapons, could have theoretically justified a higher bail. There were also two other cases of Aggravated Burglary in addition to the one causing the skew, and they had bail of $3000 and $6000.

Again, there is nothing to indicate why the Aggravated Burglary case in question had a bail of $10,000. Indeed, while the skewing case failed to indicate a length of residence in the area, it also noted no prior criminal record, a factor that previous studies have shown is negatively predictive of risk of flight. All three Aggravated Burglary cases reported negative for employment and positive for family ties. Because there is a lack of empirical support to explain the anomaly for these two cases, I excluded them from the dataset. The resulting frequency distribution had a more normal characteristic, although still asymmetrical (Shapiro-Wilk test rejecting null hypothesis of normality). However, the skewness (1.302) should not affect the parametric statistical tests to be performed as these tests are rather robust to a relatively slight violation of the assumption of normalcy and the nonparametric tests used do not have such an assumption. [19] The only other scale variable in the analysis, length of residence in the area, likewise showed a positive skew (1.045) with 50% of the sample reporting time in the area of 10 years or less and 2 years the most reported time frame (mean = 12.18). As with the amount of bail variable, this is not such a drastic skew as to affect the outcome of the tests.

Interestingly, while judicial commissioners have opined that a person employed is less likely to flee than one who is unemployed, the results of this study showed the opposite treatment. A full 100% of those individuals who reported being employed were found to be a flight risk by Rutherford County Judicial Commissioners while a lesser percentage (97.3) of those unemployed were considered a risk. (See Table 4, below). Similarly, 99% of those reporting family ties were found to be a flight risk compared to

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[19] Positive skewness is not unexpected with a variable, such as bail amount, that has a lower limit of zero and an unrestricted upper limit (Warner 2008:146).

97.7% who reported no family ties. Prior criminal record was also the opposite of expected, with 99% reporting prior records found to be a flight risk while only 98% of those with clean records were similarly treated. I examine the statistical significance of these differences in the Results section below. Additional descriptive statistics are shown in Table 4.

Table 4. Descriptive Statistics

	N	Min	Max	Mean (%)	Bail Mean	Bail SD
Independent Variables						
Crime against the Person	164	0	1	.12	$2447.37	$1723.17
Crime against Property	164	0	1	.13	2500.00	1669.05
Crime against the Admin of	164	0	1	.04	1857.14	899.74
Crime against the Public Health	164	0	1	.36	1601.69	1789.46
Crime involving Motor Vehicle	164	0	1	.35	1530.70	896.51
Crimes by Class						
Person	19			11.6	2447.37	1723.17
Property	22			13.4	2500.00	1669.05
Admin	7			4.3	1857.14	899.74
Public Health	59			36.0	1601.69	1789.46
Motor Vehicle	57			34.8	1530.70	896.51
Selected charged offenses	78					
Domestic Assault (DA)	12			15.4	2583.33	1635.31
Driving Under the Influence	24			30.8	1791.67	674.32
Implied Consent (IC)	8			10.3	500.00	0.00
Public Intoxication (PI)	15			19.2	246.67	12.91
Theft<500 (Theft500)	7			9.0	1857.14	556.35
Theft >1000 (Theft1000)	6			7.7	3333.33	1751.19
Underage Drinking (UA)	6			7.7	816.67	465.48
Length of residence in the community	135	0.0	50.0	12.2		
Employment status	158	0	1	.54		
Family ties and relationships	139	0	1	.69		
Prior Criminal Record	152	0	1	.67		
Dependent Variables						
Risk of Flight	164	0	1	.98		
Amount of Bail	164	0	$7000	$1806.40		$1512.22

VI. RESULTS

My overall research question involves whether there is any relationship between the factors enumerated in the Rutherford County mittimus with a conclusion that risk of flight exists and with the amount of bail set. Recall that the settlement agreement assured that Rutherford County judicial commissioners would set bail "only after" considering *all* the listed factors. This analysis will test how well they have kept their promise and whether they have followed state law. Overall, I would expect to find a lower finding of risk of flight for those arrestees who are employed, have family ties to the community, have no prior criminal record, and are charged with non-violent offenses, such as those not directed at a person. Similarly, I would expect the amount of bail to have some relationship to those same factors because the amount of bail set is required to be the lowest amount that will reasonably assure the person's presence in court. In other words, the lower the risk of nonappearance, the lower the amount of bail should be.

In this study, there are two dependent variables. The first, risk of flight, is a nominal variable indicating whether the commissioner determined there was a risk of flight after consideration of all the statutory factors, and the second, amount of bail, a continuous scale variable which is the least amount necessary to address the risk. [20] The latter, under Tennessee law, cannot exist without the former. In other words, a judicial commissioner must *first* determine and consider the statutory factors in order to conclude *if* there exists a risk the person will not appear for court if released pretrial. If a

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[20] I concluded that the judicial commissioners found a risk of flight if they set a monetary bail because, by statute, they cannot set bail without first finding a risk of flight.

risk of flight is found, the commissioner must then use the same statutory factors to determine the least amount necessary to address this risk of flight and ensure that the defendant will appear for court. Accordingly, I start my analysis with considering what factors, if any, resulted in a finding that there existed a risk of flight.

Initially, I should note, that in 98.2% of the cases considered, a judicial commissioner found that there existed such a risk of nonappearance. Without any detailed analysis, one can easily conclude that Rutherford County judicial commissioners assumed that everyone was a potential flight risk regardless of any of the statutory factors. Indeed, only three cases found no risk, one each charging assault, disorderly conduct, and theft over $10,000. Interestingly, the person charged in the assault case was reportedly schizophrenic and bi-polar, had only lived in the community for six months, had a prior criminal record, was unemployed, and had no family ties. The notes are somewhat confusing, but the absence of flight risk may have been ordered by the judge (rather than the judicial commissioner) for unknown reasons. The disorderly conduct case was a high school student at a local school with no prior criminal record. The theft over $10,000 case had no annotations as to the statutory factors, but a note indicates the decision may have been made by the judge. Considering the sole ROR case decided by a commissioner, a finding of no risk is rare indeed. The bivariate analysis bears this out.

A. Nominal Variable Analysis

The nominal independent variables are employment, family ties, and prior record. The nominal dependent variable is risk of flight. I use cross tabulations to determine if there is a relationship between any of the independent variables with the

nominal dependent variable. Because several cells indicated an expected count less than five and are unequally distributed (due to the overwhelming percentage where risk of flight was found), I used Fisher's Exact Test to assess significance at the .05 level with one degree of freedom (Ritchey 2008:474). As Table 5 indicates, I conclude that there is no relationship between the finding of flight risk and employment, family ties, or prior record at the 95% confidence level. This confirms my initial observation that such was likely the case when 98% of all cases in my sample were found to have an associated risk of flight regardless of variation in these factors. The differences in percentage of employed versus unemployed (reverse of expected) noted earlier that were found to be a flight risk can be attributed to chance or sampling error and not to any significant difference between the two. The same conclusion is reached for those with family ties and prior criminal records, that is, that there is no relationship between these variables and the finding of risk of flight by judicial commissioners.

Table 5. Fisher's Exact Test of 3 x 2 IV vs DV nominal variables.

			Employment $N = 158$		Family Ties $N = 141$		Prior Record $N = 154$	
			No	Yes	No	Yes	No	Yes
Risk of Flight	No	Count	2	0	1	1	1	1
		(%)	(2.7)	(0.0)	(2.3)	(1.0)	(2.0)	(1.0)
		Exp	.9	1.1	.6	1.4	.6	1.4
	Yes	Count	71	85	42	95	49	103
		(%)	(97.3)	(100)	(97.7)	(99)	(98)	(99)
		Exp	73.1	84.9	43.4	95.6	49.4	102.6
Fisher's Exact Test (p-value)			.212		.528		.545	

Note: None of the variables were found to be significant at $\alpha = .05$.

I further compared the three nominal conditions to the interval/ratio variable of amount of bail set. Using independent sample *t*-tests for each combination, I found that only prior record was significantly associated to the amount of bail. Those who appear with prior criminal conduct on their record have higher mean bail set than those who do not ($2130 and $1235, respectively). A factorial ANOVA test produced the same result with the effect size of prior record on amount of bail quite low (partial $\eta^2 = .066$).

Table 6. Factorial ANOVA of nominal variables.

	F Statistic	Partial η^2
Employment	2.184	.017
Family Ties	0.286	.002
Prior Record	9.147**	.066
Employment*Family Ties	2.375	.018
Employment*Prior Record	0.663	.005
Family Ties*Prior Record	0.739	.006
Employment*Family Ties*Prior Record	0.232	.002

*$p<.05$, **$p<.01$, ***$p<.001$, df = 1

B. Scale variable analysis

Length of residence in the community (in years) did not show any linear relationship to the amount of bail, as Figure 2 shows. In fact, the lines are quite flat across the spectrum and no linear or curvilinear relationship is apparent between length of residence in the community and amount of bail (Pearson's $r = -.021$, $N = 135$, $p = .807$). I would have expected a negative relationship with greater time in the community

correlating with lower bail representing a lower risk of flight. However, even isolating the data for just one charged offense, such as DUI, does not change the result. Figure 3 shows the scatterplot for DUI charges only and amount of bail, with flat lines still prevalent (Pearson's r = -.06, N = 19, p = .808).

Therefore, I conclude that there is no evidence of a linear relationship between length of residence in the community and risk of flight or amount of bail as found by judicial commissioners in Rutherford County.

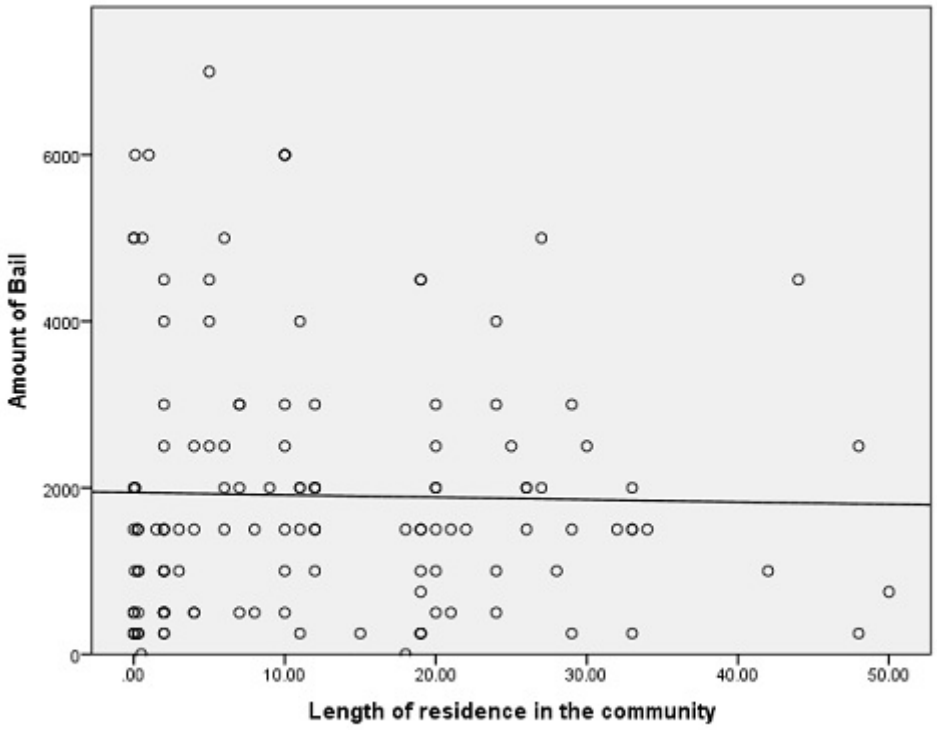

Figure 2. Scatterplot of Length of Residence to Amount of Bail with regression line.

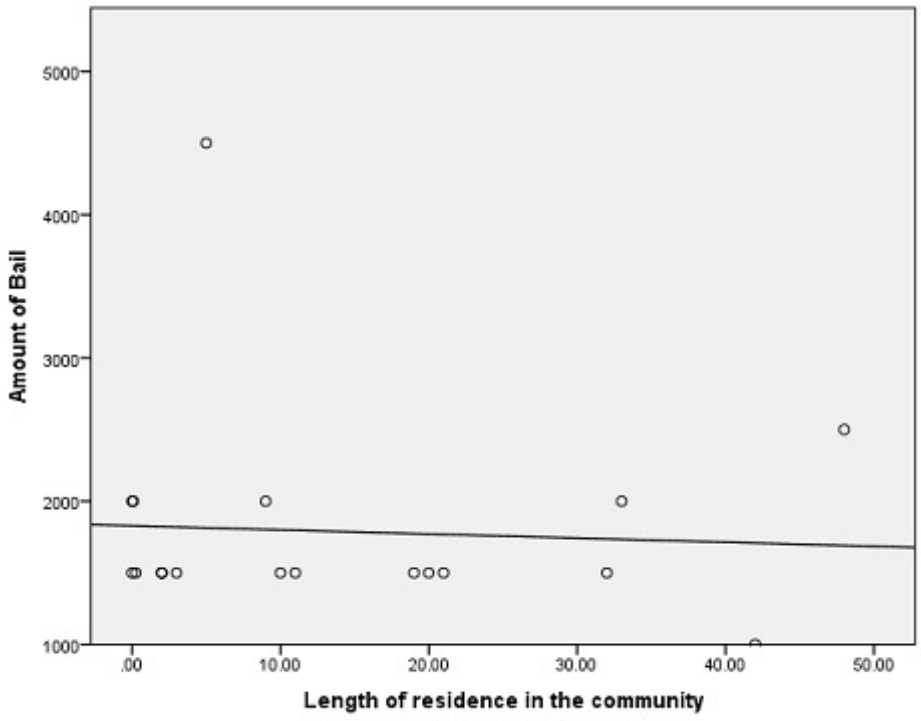

Figure 3. Scatterplot of Length of Residence to Amount of Bail with regression line - DUI only.

C. Categorical variable analysis

I recoded the nominal variables based on class of crime (person, property, admin, public health, and motor) into a categorical variable (with five groups, each representing a class of crime) to perform an omnibus test of the overall relationship with the amount of bail. Running independent *t*-tests on each nominal variable is not recommended as it increases the probability of Type I error (Warner 2008:216). I likewise recoded the top seven occurring charged offenses (in terms of frequency) into a categorical variable with seven groups. (See Table 3, p. 34, for specific coding details.) A single omnibus test involving all groups tests whether the means of the groups are equal.

I first test for assumptions of normality and equal variance before deciding on the appropriate test. While ANOVA is particularly robust to violations of these assumptions, serious violations would justify using a nonparametric test such as Kruskal-Wallis (Warner 2008:215). As I described in the section on descriptive characteristics, while the distribution of bail is asymmetric, it is close enough to normal to survive a slight violation of the assumption of normality. I use the Levene test to assess homogeneity of variance.

The Levene statistic for both class of crime and selected crimes was significant for unequal variances of amount of bail. This violation of the equal variance assumption along with the unequal sample sizes (see Table 4, above, for each group *N*) raises some concerns about the robustness of the ANOVA test on this sample (Warner 2008:219-220). To confirm robustness in the face of unequal variances, I ran a Monte Carlo

simulation of a one-way ANOVA on 1000 groups with equal variances using simulated data and compared this with one-way ANOVA using the standard deviations and sample sizes of the five class of crime groups. (See Warner 2008:187 for an explanation of Monte Carlo on examining *t* test robustness in the face of assumption violations). The proportion of trials that had a *p* value of less than 0.05 was 0.065, thereby confirming that the unequal variances of the real data did not drastically affect the probability of Type I error. However, this Monte Carlo simulation did not test the combined effect of small sample size and unequal group size which significantly increases the risk of Type I error (Warner 2008:187).

The omnibus ANOVA test for both class of crime and crime select showed significance for mean differences of amount of bail at the .05 level but failed to show any significance between groups on the selected post hoc test (Tamhane). This is not particularly unusual and can happen "because protected post hoc tests are somewhat more conservative, and thus require slightly larger between-group differences as a basis for a decision that differences are statistically significant, than the overall one-way ANOVA" (Warner 2008:241). To test these variables further, I performed the nonparametric Kruskal-Wallis *H* test.

For both variables, the independent samples Kruskal-Wallis *H* test was significant at the .05 level, indicating that at least one pair within the group had a statistically significant difference in mean bail. $X^2_{\text{Class of Crime}}$ (4, N = 164) = 15.93, p = .003, $X^2_{\text{Select Crimes}}$ (6, N = 78) = 58.92, p = .001. To examine which pairs of groups were different from each other, I conducted a pairwise comparison in SPSS using Mann-Whitney *U* for each pair and applying Bonferroni adjustment to control for Type I error.

(See Warner 2008:239 for an explanation of the Bonferroni adjustment to alpha). [21]

The results, shown in Table 7 for class of crime and Table 8 for selected crimes, show statistical significance between a number of pairwise groups at the .05 level. The significance of Crime_PubHealth is likely affected by the significance of public intoxication because public intoxication is included in that class of crime. While Table 7 shows significance, the real effect on the amount of bail is from the actual charged offense, as illustrated by the highly significant findings in Table 8.

Table 7. Mann-Whitney pairwise comparison - Class of Crime - Amount of Bail

		Test statistic (*U*)			
		1	2	3	4
1	Crime_Person				
2	Crime_Property	-1.87			
3	Crime_Admin	8.02	9.89		
4	Crime_Pub Health	**36.47***	**38.34***	28.45	
5	Crime_Motor	22.25	24.13	14.24	-14.22

*p<.05, **p<.01, ***p<.001, $\eta^2 = 0.10$.

[21] The procedure for conducting this test is not immediately apparent to the casual user of SPSS. This post hoc test is only viewable if the Independent Samples dialog box is used instead of the Legacy/K Independent Samples box. After selecting the appropriate variables, select "Kruskal-Wallis 1-way ANOVA (k samples)" in the Setting Tab and choose "All pairwise" in the "Multiple comparisons" window. Double click on the output and in the bottom of the right-hand window, in the "View" window, select "Pairwise Comparisons". The pairwise *p*-values will appear in a table. See Green and Salkind (2013).

Table 8. Mann-Whitney pairwise comparison - Selected Crimes - Amount of Bail

		Test statistic (*U*)					
		1	2	3	4	5	6
1	Domestic Assault						
2	Driving Under the Influence	8.98					
3	Implied Consent	**37.12****	**28.15***				
4	Public Intoxication	**49.12*****	**40.15*****	12.00			
5	Theft<$500	5.55	-3.43	-31.57	**-43.57*****		
6	Theft>$1000	-5.88	-14.85	**-43.00****	**-55.00*****	-11.43	
7	Underage Drinking	33.29	24.31	-3.83	-15.83	27.74	**39.17***

*p<.05, **p<.01, ***p<.001, $\eta^2 = 0.76$.

VII. DISCUSSION AND CONCLUSION

The question presented in this study was if any of the factors considered by judicial commissioners as summarized on the individual mittimuses had any significant relationship to risk of flight or the amount of bail. Previous summary examinations of several county bail practices through deposition transcripts and electronic data appeared to show a practice of considering only the charged offense as the primary, if not the only, factor that affected these two outcomes. Historical studies, in particular the analysis by Foote (1954) of bail in Philadelphia, also showed the charged offense as the overriding factor and the particular history of Rutherford County showed that its

commissioners followed that same practice. A variety of statistical tests were performed on bail decisions by Rutherford County judicial commissioners to examine all possible variables, individually and as groups, and only the charged offenses and existence of a prior criminal record had a statistically significant relationship to bail. Contrary to the settlement agreement in *Jones v Rutherford County* (2008), the judicial commissioners continue to use the charged offense as the primary criteria for setting bail. While having a prior record accounted for 6% of the observed variance, the particular charged offense accounted for 76% of the variance in amount of bail. With release on recognizance a rare event, the presumption appears to be that everyone, regardless of varying socioeconomic conditions that tie them to the area, is a flight risk and only a monetary payment can reduce that risk to a acceptable level. Pretrial release on conditions, as opposed to monetary bail, is seldom, if ever, used other than the typical domestic assault order to stay away from the alleged victim. The practice in Rutherford County and, indeed, throughout the State of Tennessee, is that those arrested must pay money to get out of jail before trial. While state law does provide alternatives to paying money, such as posting unencumbered real property as collateral or having two noncommercial sureties post a bond, these alternatives are typically not explained to arrestees if they do not think to ask. Macon County Judicial Commissioner Phillip Spears Jr. explained the usual process regarding alternatives to posting money:

> Q. Do you explain to the defendants the options that they have for posting that bail amount?
>
> A. Yes, sir.
>
> Q. And what do you tell them?

> A. I just – I tell them that – well, I don't tell – I'll – I'll explain to you like this. I don't tell them anything unless they ask.
>
> Q. So let's say you decide that the bail is going to be $1000.
>
> A. Okay.
>
> Q. Do you tell them at all the options that they have to post that $1000?
>
> A. If they ask, yes.
>
> Q. If they don't ask you don't tell them?
>
> A. I don't tell them anything.
>
> Q. Is there anywhere where they would get that information – different options that they have?
>
> A. They could ask the jailer I guess and he could tell them – you know, inform them what options they will have (*Holman v. Macon County* 2010).

Of course, this begs the question: How can arrestees, who probably do not know the law, receive information about their options for posting bail if they do not know to ask? As a result of this lack of knowledge, the vast majority of those arrested use commercial bail bondsman to post a bond for their bail. There is often a vested commercial interest in not disclosing such information to arrestees. For example, public documents in Trousdale County show that the owner of Hartsville Bonding Company, Henry Linville, is the father in law of the Chief Deputy in charge of the local jail, is related to Shelvy Linville the County Mayor, and related to General Sessions Court Judge Kenny Linville who would have statutory authority to review any bail decisions made by judicial commissioners. There is also a local attorney named Sharon Linville. This type of "cozy relationship[] between bondsmen and members of the court and law enforcement community" has "produced damning reports of bondsman corruption, collusion with

criminal justice authorities, and abuses against indigent defendants" (Maruna 2012:326).

In Rutherford County, length of time in the community, employment, and family ties had no significant effect on a finding that risk of flight existed or the dollar amount of bail that would sufficiently address or deter the risk. Despite clear law that requires consideration of these and other factors and despite a written settlement agreement and amended policy manual that required the same, Rutherford County judicial commissioners appear to ask some of the required questions, annotate the responses, and then disregard everything but the charged offense. The questions and responses on the mittimuses appear to be mere window dressing that mask the more simplistic actions of the judicial commissioner. Indeed, comparing means of the seven selected offenses to the presumptive bail amount originally set by the preset bond schedule (Appendix A) that was the subject of the *Jones* lawsuit (one sample *t* test), only two – DUI and underage drinking – are statistically different from the original preset list. It appears that Rutherford County judicial commissioners continue to presume everyone is a risk of flight, that only monetary bail can deter that risk, and everyone is deterred by the same amount of money as the old list assumed.

There is an unequal power dynamic at play here as well. Not only are arrestees not informed of their legal options for posting bail but they are not informed of their right to have counsel present during questioning by judicial commissioners nor what criteria is to be considered in restricting their liberty. Those that think to question the process or amount of bail have no effective recourse. In the case of *Crowder v Marshall County* (2013), the arrestee alleged that he complained of excessive bail after the

judicial commissioner set it without asking any questions or taking any statutory factors related to risk of flight into consideration. A video recording of the encounter, obtained through a public records request, shows the judicial commissioner calmly walking around the counter to where the arrestee was standing after he complained about his bail and proceeding to punch the arrestee repeatedly in the face until subdued by corrections officers present at the scene. While the judicial commissioner was ultimately charged with assault, he was given a diversionary sentence (no jail time and option to expunge his record after a period of time) while the arrestee was convicted of his offense and sent to state prison. Arrestees who desire to challenge their bail are given a legal paradox as a choice. If they post the money, the appeal based on excessive bail is rendered moot since they were released from jail and no longer would receive a real remedy from any judicial decision. On the other hand, if they preserve their appeal by refusing to post the bail until a court with appellate jurisdiction over bail hears the case, they can sit in jail for days if not weeks waiting for the hearing.

Is this failure to consider statutory factors by Rutherford County judicial commissioners a deliberate ruse, a purposeful disregard for the law they are sworn to uphold, or is there something more complex happening here? Foote (1954) suggested that the problem was the complexity of the task we ask of these judicial officers. To be sure, attempting to quantify such esoteric factors as reputation in the community and how the effect of this on one's social bond can influence an arrestee's decision to not appear for court, can be a daunting task. To date, no one has successfully managed to do this on the front end. Kahneman (2011) theorized that when people are asked to "generate intuitive ideas on complex matters" they tend to substitute an easier, heuristic

question. In the context of expressing feelings in dollars, he suggested that we perform "intensity matching" (Kahneman 2011:99). For example, the question "How much would you contribute to save an endangered species" is substituted by "How much emotion do I feel when I think of dying dolphins". The feeling and how much to contribute are both "intensity scales" that can be matched. Judicial commissioners may be asking themselves the question of "How much money should this person be required to pay for what he has allegedly done" rather than the legally required "What least onerous conditions of release, including possibly money bail, are needed to reasonably assure this person will appear in court as ordered?"

When a new arrestee is first presented to a judicial commissioner, the officer usually performs the task of asking the questions on the form in a matter of minutes if not seconds. In observing some inquiries in person in other counties, I noticed that several bail decisions were made in less than 30 seconds. The officer does have a great deal of time to ponder the complexities of social bonding theory, deterrence theory, and mathematical probabilities. While creating a mittimus form that presents questions to be asked with room to write the responses was clearly an improvement over the old practice of not keeping a record of the exchange, the current form fails to provide a clear guide to judicial commissioners on how to apply the factors examined to the ultimate goal of setting an individualized, reasonably calculated bail to deter a direct risk of nonappearance.

The International Association of Chiefs of Police has conceded that "financial bail is not a reliable predictor of whether a defendant will appear in court or remain free of crime while out on bail" (Weinstein 2011). Even Justice Jackson, in his concurring

opinion in *Stack v Boyle* recognized that setting the same bail for everyone charged with the same offense "violate[d] the law of probabilities". Only one other country besides the United States uses a bail system that solely revolves around the concept of paying money to get out of jail, a system so inequitable that even the American Bar Association has advocated for its elimination (Carlson 2011). So why, then, do judicial commissioners continue to rely almost exclusively on the charged offense and a preset bail schedule for setting bail? Understanding that the complexity of predicting future nonconforming behavior through examination of several social bonding factors is difficult even for social scientists to do, Rutherford County commissioners and those across the state could benefit from examining and emulating other jurisdictions that have attempted to create a system that is empirically based and easy to follow. The federal courts have wholly eliminated not only commercial bonding companies but also monetary bail (other than personal surety notes) and have designed a Pretrial Risk Assessment Tool (PTRA Tool) (Appendix C) that can be modified for the particular state jurisdictions. Simplifying the process, educating judicial commissioners, advocacy and support by elected judges, and creating an empirically based, methodological approach to setting bail could ensure a return to the constitutionally supported method of bail that is both reasonably calculated and individualized to truly address a particular individual's risk of flight or danger to the community. But this does not end the inquiry. While the PTRA Tool does simplify the process and provides an avenue to quantify the factors, the end result of following the steps of the tool is a "Risk Score." The task remains for judicial commissioners to convert the Risk Score to some measure where they can use it to determine what conditions of release will reasonably assure court

appearances.

As mentioned, the federal courts have eliminated money-based bail as the primary method of attempting to ensure appearance for trial and at least two state supreme courts have held that money-based bail systems that use a preset bail schedule are unconstitutional under their respective constitutions (*Clark v Hall* 2002; *Pelekai v White* 1993). Scotland eliminated its money-based bail system after recognizing that 27% of those required to post an average bail of only 20 pounds (about $40) could not pay the money and where only 6% of those released pretrial failed to appear for court (Schachter 1989). The possibility of forfeiting such a small amount "was not likely to deter any salaried person who planned to flee trial. For those accused persons who were impoverished, however, it meant incarceration" (Schachter 1989:56). Closer to home, Fignar (1978) examined a pretrial release program instituted by Davidson County (Nashville), Tennessee, from 1973 to 1978 through a federal grant that did not involve posting money. Between July 1973 and July 1978, 3705 individuals were released pretrial through the program with only a 2.2% failure rate. The relatively low failure rate in jurisdictions where bail is not based on money should raise the question of whether money can really act as a deterrent to nonappearance, most especially in a system where commercial bonding companies act as an intervening connection between the money and appearance.

In my experience of practicing law for over 15 years, I have found very few defendants fail to appear for court. Out of those that do fail to appear, it is rarely out of a true intent to flee justice. Most fail to appear for court for reasons that are not reflected in any of the literature or form questionnaires. For example, while Maxwell (1999:137)

found women were about 60% more likely to fail to appear than men when released on their own recognizance and 50% more likely than men when released on bail, she failed to posit any explanation for this "incongruent pattern." Interestingly, whether the women were released ROR or under a money bail did not seem to matter and across the board the FTA rate did not seem to match predictions based on ROR or money bail release orders. This raises serious doubts about the efficacy of money bail as a deterrent on nonappearance. If gender is a significant predictive factor of FTA, I doubt that the connection is somehow based on any inherent characteristics of being female. Rather, gender is likely a proxy for something else. Women are still the primary care givers for children in the United States (Lavee and Katz 2002) and likely more so in the South. Those who are involved in the revolving door of the criminal justice system are often at a lower socioeconomic class and cannot afford childcare. Without the family or financial resources to arrange for childcare, if faced with the choice of not going to court or leaving a child alone, a female defendant is likely to choose the former. This difficult choice can be further compelled when defendants are faced with a sign on the courtroom door, as I have seen, that no babies are allowed. Is this really something that should be punished or addressed through a requirement to pay more money in the form of bail? Or can this be addressed at the front end by judicial commissioners asking all defendants if they have small children and have access to adequate childcare on their scheduled court dates? Ironically, if such defendants had the money to pay a higher bail because they are at higher risk of nonappearance they would have the money to pay for childcare. Keeping them in jail under an excessively high bail without addressing this rather simple issue hardly serves the goals of justice or efficiency.

Similarly, no one asks defendants if they need a reminder for their court dates. Fignar (1978) found that a pretrial services program that had a trial date reminder as a component was effective in reducing FTA's. At a judicial commissioner's conference held in April, 2011, I asked 110 attending judicial commissioners from across the State of Tennessee to give their opinions of why people fail to appear for court – 40 attendees responded. Out of all the reasons provided, 34.5% fell under the category of forgetfulness or confusion/misunderstanding of the court date. Another 18% were transportation or childcare related reasons. And yet, these factors are never questioned or considered in the process of setting bail. Even the judicial commissioners themselves concluded that only 17% did so with a deliberative purpose to avoid punishment. If money bail was used for that 17% the commissioners had in mind then why did the forfeiture of such money not act as an adequate deterrent for them? No one seems to be able to explain that disconnect.

Pretrial release services have proven successful in the federal system and were an effective alternative to money bail in Davidson County from 1973 to 1978 (Fignar 1978). Amending the bail laws of Tennessee to allow payment of a flat bail fee to the court clerk instead of to a commercial bail bonding company could easily fund the cost of such a pretrial services division and allowing a fee waiver for those who are truly indigent would ensure that no one stays in jail solely because they are poor. Allowing a pilot project to update the idea behind the 1978 Davidson County experiment would allow for more current data collection and ensure that such a program could function in today's judicial climate.

Clearly, more research is needed to further refine those factors that are behind a defendant's decision to not appear for court. The Rutherford County questionnaires were limited in that many factors, such as access to childcare and transportation, court date reminders, and access to drug and alcohol treatment, that could help predict failures to appear were absent. Comparison between a money-based bail system, such as presently exists across Tennessee, and a non-money-based system with a robust pretrial services program and close supervision of those released pretrial would help resolve the debate of whether demanding money as a condition of pretrial release actually serves to reduce nonappearance.

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Holman v. Macon County, Tennessee, U.S. District Court for the Middle District of Tennessee, Case No. 02:10-0036, Deposition of Judicial Commissioner Phillip Ray Spears, Sr., October 13, 2010. Excerpts available on PACER, Docket Report, Entry No. 40-1.

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Kennedy v. Louisiana, 554 U.S. 407, 128 S.Ct. 2641, 2649, 171 L. Ed. 2d 525 (2008).

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Schilb v. Kuebel, 404 U.S. 357, 365, 92 S. Ct. 479, 30 L. Ed. 2d 502 (1971).

Stack v. Boyle, 342 U.S. 1, 96 L. Ed. 3, 72 S. Ct. 1 (1951).

Staley v. Wilson County, Tennessee, U.S. District Court for the Middle District of Tennessee, Case No. 3:04-1127, Deposition of Judicial Commissioner Charles Churchwell, March 15, 2006.

Tate v. Trousdale County, Tennessee, U.S. District Court for the Middle District of Tennessee, Case No. 03-09-0201, Deposition of Judicial Commissioner Charles Puckett, September 28, 2009.

United States v. Edwards, 430 A.2d 1321 (D.C. 1981).

APPENDICES

ADULT CHARGE CODE LISTING

A115	ABANDONMENT (CHILD-LEAVING STATE) (D/F)	D/F	2500.00	20
A110	ABANDONMENT (WIFE-LEAVING STATE) (D/F)	D/F	2500.00	20
A14	ABDUCTION (A/F)	A/F	15000.00	04E
A13	ABDUCTION (ATTEMPTED) (A/F)	A/F	15000.00	04E
A71	ABUSE OF CORPSE (E/F)	E/F	2500.00	26
N3	ABUSE:NURSING HOME PATIENT (B/M)	B/M	1500.00	04E
A7	ACCESSORY AFTER FACT (E/F)	E/F	2500.00	26
A6	ACCESSORY BEFORE THE FACT (E/F)	E/F	2500.00	26
A165	ALLOWING ANIMAL TO ROAM AT LARGE (C/M)	C/M	250.00	26
A175	ALLOWING SEWAGE TO RUN ON TOP OF GROUND	C/M	250.00	26
A95	ANIMAL/COCK FIGHTING (E/F)	E/F	2500.00	26
A96	ANINAL/COCK FIGHTING SPECTATOR (C/M)	C/M	550.00	26
C10	ANIMAL:CRUELTY TO (A/M)	A/M	1500.00	26
K18	ANIMAL:INTENT KILLING OF-$10,000-60,000 (C/F)	C/F	3000.00	26
K17	ANIMAL:INTENT KILLING OF-$1000-$10,000 (D/F)	D/F	2500.00	26
K19	ANIMAL:INTENT KILLING OF-$500 OR LESS (A/M)	A/M	1500.00	26
K16	ANIMAL:INTENT KILLING OF-$500-$1000 (E/F)	E/F	2000.00	26
A19	APPEAL BOND		PER JUDGE	26
A195	ARSON (C/F)	C/F	10000.00	09
A105	ARSON (AGGRAVATED) (A/F)	A/F	20000.00	09
A15	ARSON (ATTEMPTED) (C/F)	C/F	10000.00	09
A65	ASSAULT (A/M	A/M	2500.00	04E
A70	ASSAULT (DOMESTIC) (A/M)	A/M	2500.00	04E
A45	ASSAULT W/INTENT TO COMMIT MURDER 1ST DEG	A/F	20000.00	04C
A85	ASSAULT W/INTENT TO COMMIT RAPE (B/F)	B/F	15000.00	04C
A50	ASSAULT W/INTENT TO ROB (C/F)	C/F	10000.00	04A
A25	ASSAULT (AGGRAVATED:FIREARM) (C/F)	C/F	10000.00	04A
A185	ASSAULT (AGGRAVATED:OTHER WEAPON) (C/F)	C/F	10000.00	04A
A100	ASSAULT (AGGRAVATED:VIOLATION OF PROTECIVE	C/F	10000.00	08
A140	ASSAULT:VEHICULAR (D/F)	D/F	5000.00	04C
A130	ATTACHMENT ORDER		PER JUDGE	20
A5	ATTEMPT TO COMMIT A FELONY (E/F)	E/F	2000.00	26

A20	ATTEMPT TO DESTROY PROPERTY W/EXPLOSIVES	D/F	2500.00	14
A150	AWOL FROM ARMED SERVICES (E/F)	E/F	HOLD/MPs	26
A155	AWOL FROM NATIONAL GUARD (C/M)	C/M	500.00	26
A210	AWOL FROM NATIONAL GUARD (MISSING MOVEMENT	C/M	500.00	26
B115	BAIL FOR STATE WITNESS		PER JUDGE	26
B65	BAIL JUMPING (FELONY CHARGE) (E/F)	E/F	10000.00	26
B60	BAIL JUMPING (MISD CHARGE) (A/M)	A/M	5000.00	26
B100	BENCH WARRANT	E/F	PER/JUDGE	26
B1	BENCH WARRANT (GENERAL SESS. MISD.)	A/M	2500.00	26
B45	BIGAMY (A/M)	A/M	2000.00	20
B120	BOATING UNDER THE INFLUENCE (A/M)	A/M	2500.00	26
B30	BOATING VIOLATION (C/M)	C/M	500.00	NA
B31	BOATING VIOLATION (B/M)	B/M	1000.00	NA
B32	BOATING VIOLATION (A/M)	A/M	1500.00	NA
B40	BOMB THREATS (E/F)	E/F	5000.00	08
B75	BONDSMAN OFF BOND (FELONY CHARGE)	E/F	PRIOR CHARGE	26
B80	BONDSMAN OFF BOND (MISD CHARGE)	A/M	PRIOR CHARGE	26
B52	BRIBERY OF A JUROR (C/F)	C/F	5000.00	26
B51	BRIBERY OF A WITNESS (C/F)	C/F	5000.00	26
B50	BRIBERY TO OFICER (C/F)	C/F	5000.00	26
B55	BRIBERY (ACCEPTING BRIBE) (C/F)	C/F	5000.00	26
B90	BURGLARY TO AUTO (E/F)	E/F	2500.00	06
B105	BURGLARY TOOLS:POSSESSION OF (AM)	A/M	1500.00	06
B35	BURGLARY W/EXPLOSIVES (D/F)	D/F	2500.00	05A
B95	BURGLARY (ATTEMPTED) (D/F)	D/F	2500.00	05C
B110	BURGLARY (COIN OPERATED MACHINES) (E/F)	E/F	2500.00	06
B11	BURGLARY (SAFECRACKING) (D/F)	D/F	4000.00	05A
A3	BURGLARY:AGGRAVATED (C/F)	C/F	5000.00	05A
A4	BURGLARY:ESPECIALLY AGGRAVATED (B/F)	B/F	10000.00	05A
A1	BURGLARY:HABITATIONAL (C/F)	C/F	5000.00	05A
A2	BURGLARY:NON-HABITATIONAL (D/F)	D/F	2500.00	05A
C54	CAPIAS AND BOND (SEALED INDICTMENT)	E/F	BY WARRANT	26
C55	CAPIAS AND BOND:FELONY	E/F	BY WARRANT	26
C56	CAPIAS AND BOND:MISD.	A/M	BY WARRANT	26

C155	CARJACKING (B/F)	B/F	10000.00	06
C80	CARRYING WEAPON F/PURPOSE OF GOING ARMED	A/M	2000.00	15
C85	CHILD ABUSE/NEGLECT (A/M)	A/M	2500.00	15
C46	CHILD ABUSE/NEGLECT:AGGRAVATED (B/F)	B/F	10000.00	04D
C135	CHILD ABUSE/NEGLECT:AGGRAVATED (6& UNDER)	A/F	20000.00	20
C86	CHILD ABUSE/NEGLECT:UNDER 6 YOA (D/F)	D/F	5000.00	04D
C95	CHILD ABUSE:SEXUAL (RAPE/FONDLE) (B/F)	B/F	20000.00	17
E21	CHILD ENDANGERMENT (A/M)	A/M	2500.00	21
E22	CHILD ENDANGERMENT:AGGRAVATED (D/F)	D/F	5000.00	21
E45	CHILD ENDANGERMENT:ESPECIALLY AGG. (C/F)	C/F	7500.00	21
C99	COERCION OF WITNESS (E/F)	E/F	4000.00	26
C90	COMMUNICATING A THREAT (B/M)	B/M	1000.00	04E
C145	COMPOUNDING (A/M)	A/M	1000.00	11
C150	COMPOUNDING (E/F)	E/F	1500.00	11
C6	COMPUTER OFFENSE/$10,000-$60,000 (C/F)	C/F	5000.00	06
C4	COMPUTER OFFENSE/$1,000-$10,000 (D/F)	D/F	4000.00	06
C2	COMPUTER OFFENSE/$500 OR LESS (A/M)	A/M	2000.00	06
C3	COMPUTER OFFENSE/$500-$1,000. (E/F)	E/F	3000.00	06
C7	COMPUTER OFFENSE/$60,000-UP (B/F)	B/F	10000.00	06
C160	CONDUCTING BUSINESS W/OUT LICENSE (A/M)	A/M	1000.00	NA
C65	CONSPIRE TO DISTRIBUTE MARIJUANA (E/F)	E/F	4000.00	18C
C100	CONSUMING ALCOHOL UNDER 21 YOA (A/M)	A/M	1500.00	NA
P265	CONSUME ALCOHOL ON SCHOOL PROPERTY (C/M)	C/M	250.00	22
C75	CONTEMPT		PER JUDGE	26
C30	CONTRABAND (BRINGING INTO JAIL) (C/F)	C/F	5000.00	26
C120	CONTRABAND (BRINGING INTO WORKHOUSE) (C/F)	C/F	5000.00	26
C70	CONTRIBUTE TO THE DELINQUENCY OF A MINOR	A/M	1500.00	26
H30	CRASH HELMET VIOLATION (C/M)	C/M	250.00	26
C40	CRIMINAL ABORTION (C/F)	C/F	5000.00	26
C69	CRIMINAL CONSPIRACY (A/M)	A/M	1500.00	06
C66	CRIMINAL CONSPIRACY (C/F)	C/F	5000.00	06
C67	CRIMINAL CONSPIRACY (D/F)	D/F	4000.00	06
C68	CRIMINAL CONSPIRACY (E/F)	E/F	3000.00	06
C64	CRIMINAL CONSPIRACY (B/F)	B/F	10000.00	06

EXHIBIT TO COMPLAINT

C165	CRIMINAL CONTEMPT (BOND CONDITION) " " Violation of Order of Protection		20000.00 10,000.	26
C50	CRIMINAL EXPOSURE TO HIV (C/F)	C/F	5000.00	17
C17	CRIMINAL IMPERSONATION (B/M)	B/M	1500.00	26
C20	CRIMINAL RESPON FOR CONDUCT OF ANOTHER		BY WARRANT	26
C18	CRIMINAL RESPON/FACILITATION OF FELONY		BY WARRANT	26
C33	CRIMINAL SIMULATION:$10,000-$60,000 (C/F)	C/F	5000.00	06
C32	CRIMINAL SIMULATION:$1,000-$10,000 (D/F)	D/F	2500.00	06
C31	CRIMINAL SIMULATION:$1,000-LESS (E/F)	E/F	2000.00	06
C34	CRIMINAL SIMULATION:$60,000 & UP (B/F)	B/F	10000.00	06
C35	CRIMINAL TRESPASS (C/M)	C/M	500.00	26
C12	CRIMINAL TRESPASS:AGGRAVATED (B/M)	B/M	1000.00	26
C16	CUSTODIAL INTERFERENCE (A/M)	A/M	1500.00	20
C14	CUSTODIAL INTERFERENCE (E/F)	E/F	2500.00	20
D50	DECEPTIVE BUSINESS PRACTICES (B/M)	B/M	1000.00	26
D66	DELIVERY/SALE/POSS OF JIMSON WEED (A/M)	A/M	1000.00	18
D2	DESSEMINATION OF SMOKING MATERIALS (< 18)	C/M	500.00	26
D15	DESTRUCTION OF LAND MARKS (E.F)	E/F	2500.00	14
D3	DISORDERLY CONDUCT (C/M)	C/M	500.00	24
U10	DISPENSING ALCOHOLIC BEV. W/O LICENSE (B/M)	B/M	1500.00	22
D85	DISPOSING OF GOODS;SECURITY INTEREST (E/F)	E/F	2500.00	06
P91	DISTRIB/CASUAL EXCHANGE MARIJUANA (A/M)	A/M	1500.00	18F
P92	DISTRIB/CASUAL EXCHANGE MARIJUANA:3RD OFF.	E/F	2500.00	18F
D120	DRAG RACING	B/M	1000.00	26
M25	DRIVERS LICENSE/MFG/USE/BOGUS LICENSE (A/M)	A/M	1500.00	10
D135	DRIVING BY PERMIT W/O LIC DRIVER (C/M)	C/M	CIT/ROR	NA
D130	DRIVING ON CANCELLED LICENSE (B/M)	B/M	500.00	NA
D60	DRIVING ON REVOKED DRIVERS LICENSE (B/M)	B/M	1000.00	NA
D60-I	DRIVING ON REVOKED (10TH OFFENSE) (A/M)	A/M	2500.00	NA
D60-J	DRIVING ON REVOKED (11TH OFFENSE) (A/M)	A/M	2500.00	NA
D60-K	DRIVING ON REVOKED (12TH OFFENSE) (A/M	A/M	2500.00	NA
D60-L	DRIVING ON REVOKED (13TH OFFENSE) (A/M)	A/M	2500.00	NA
D60-M	DRIVING ON REVOKED (14TH OFFENSE) (A/M)	A/M	2500.00	NA
D60-N	DRIVING ON REVOKED (15TH OFFENSE) (A/M)	A/M	2500.00	NA
D60-A	DRIVING ON REVOKED (2ND OFFENSE) (A/M)	A/M	1500.00	NA

EXHIBIT TO COMPLAINT

D60-B	DRIVING ON REVOKED (3RD OFFENSE0 (A/M)	A/M	1500.00	NA
D60-C	DRIVING ON REVOKED (4TH OFFENSE) (A/M)	A/M	2500.00	NA
D60-D	DRIVING ON REVOKED (5TH OFFENSE) (A/M)	A/M	2500.00	NA
D60-E	DRIVING ON REVOKED (6TH OFFENSE) (A/M)	A/M	2500.00	NA
D60-F	DRIVING ON REVOKED (7TH OFFENSE) (A/M)	A/M	2500.00	NA
D60-G	DRIVINGON REVOKED (8TH OFFENSE0 (A/M)	A/M	2500.00	NA
D60-H	DRIVING ON REVOKED (9TH OFFENSE) (A/M)	A/M	2500.00	NA
D95	DRIVING ON SUSPENDED (B/M)	B/M	500.00	NA
D205	DRIVING ON SUSPENDED (2-5TH OFFENSE)	B/M	1000.00	NA
D210	DRIVING ON SUSPENDED (6TH OFFENSE +)	B/M	1500.00	NA
D90	DRIVING W/OUT A LICENSE (C/M)	C/M	250.00	NA
D13	DRUG-FREE SCHOOL ZONE		PER WARRANT	18
D111	DUI BY ALLOWING (A/M)	A/M	2500.00	21
D65	DUI OFFENSE #1 (A/M)	A/M	2500.00	21
D138	DUI OFFENSE #10 (E/F)	E/F	4000.00	21
D139	DUI OFFENSE #11 (E/F)	E/F	4000.00	21
D140	DUI OFFENSE #12 (E/F)	E/F	4000.00	21
D141	DUI OFFENSE #13 (E/F)	E/F	4000.00	21
D142	DUI OFFENSE #14 (E/F)	E/F	4000.00	21
D143	DUI OFFENSE #15 (E/F)	E/F	4000.00	21
D70	DUI OFFENSE #2 (A.M)	A/M	2500.00	21
D75	DUI OFFENSE #3 (A/M)	A/M	3000.00	21
D80	DUI OFFENSE #4 (E/F)	E/F	4000.00	21
D100	DUI OFFENSE #5 (E/F)	E/F	4000.00	21
D105	DUI OFFENSE #6 (E/F)	E/F	4000.00	21
D110	DUI OFFENSE #7(E/F)	E/F	4000.00	21
D136	DUI OFFENSE #8 (E/F)	E/F	4000.00	21
D137	DUI OFFENSE #9 (E/F)	E/F	4000.00	21
D145	DUI:AGGRAVATED (A/M)	A/M	2500.00	21
D165	DWI:21 YOA & OVER (4TH OFFENSE) (E/F)	E/F	4000.00	21
D200	DWI:18-20 YOA (A/M)	A/M	2500.00	21
D195	DWI:21 YOA & OVER (10TH OFFENSE) (E/F)	E/F	4000.00	21
D150	DWI:21 YOA & OVER (1ST OFFENSE) (B/M)	B/M	1500.00	21
D155	DWI:21 YOA & OVER (2ND OFFENSE) (A/M	A/M	2500.00	21

D160	DWI:21 YOA & OVER (3RD OFFENSE) (A/M)	A/M	2500.00	21
.70	DWI:21 YOA & OVER (5TH OFFENSE) (E/F)	E/F	4000.00	21
D175	DWI:21 YOA & OVER (6TH OFFENSE) (E/F)	E/F	4000.00	21
D180	DWI:21 YOA & OVER (7TH OFFENSE) (E/F)	E/F	4000.00	21
D185	DWI:21 YOA & OVER (8TH OFFENSE (E/F)	E/F	4000.00	21
D190	DWI:21 YOA & OVER (9TH OFFENSE) (E/F)	E/F	4000.00	21
13	EMPLOY/ALLOW MINOR TO SELL ALCOHOL (A/M)	A/M	2500.00	22
E1	ENTICE CHILD TO PURCHASE ALCOHOL (A/M)	A/M	1500.00	22
E40	ESCAPE FELONIOUS OTHER THAN WORKHOUSE (E/F)	E/F	5000.00	26
E38	ESCAPE FROM CUSTODY OF OFFICER (FELONY) (E/F)	E/F	5000.00	26
E37	ESCAPE FROM CUSTODY OF OFFICER (MISD) (A/M)	A/M	2500.00	26
E35	ESCAPE FROM DETENTION CENTER (FELONY) (E/F)	E/F	3000.00	26
E36	ESCAPE FROM DETENTION CENTER (MISD) (A/M)	A/M	2500.00	26
E15	ESCAPE FROM WORKHOUSE (CHARGED W/FELONY)	E/F	5000.00	26
E20	ESCAPE FROM WORKHOUSE (CHARGED W/MISD)	A/M	2500.00	26
E39	ESCAPE PERMITTING OR FACILITATING (A/M)	A/M	2000.00	26
E41	ESCAPE PERMITTING OR FACILITATING (FELONY)	E/F	2500.00	26
:26	ESCAPE:ATTEMPTED (FELONY) (E/F)	E/F	3500.00	26
E25	ESCAPE:ATTEMPTED (MISD) (A/M)	A/M	2000.00	26
S5	ESPECIALLY AGG SEXUAL EXPLOIT OF MINOR (B/F)	B/F	10000.00	17
F6	EVADING ARREST (A/M)	A/M	1500.00	24
F135	EVADING ARREST (MOTOR VEHICLE) (E/F)	E/F	3000.00	24
F140	EVADING ARREST (RISK DEATH/BODILY INJURY)	D/F	4000.00	24
E2	EXTORTION (D/F)	D/F	3000.00	11
F61	FAILURE TO APPEAR IN COURT (A/M)	A/M	1500.00	26
F60	FAILURE TO APPEAR IN COURT (E/F)	E/F	2500.00	26
F50	FAILURE TO CAUSE CHILD TO GO TO SCHOOL (C/M)	C/M	250.00	20
F125	FAILURE TO ENDORSE/DELIVER TITLE (C/M)	C/M	250.00	26
F150	FAILURE TO EXHIBIT LICENSE ON DEMAND (C/M)	C/M	250.00	NA
F1	FAILURE TO GIVE INFO AND RINDER AID (A/M)	A/M	1000.00	26
F13	FAILURE TO KEEP RECORD OF PURCHASES(SCRAP)	C/M	250.00	26
F26	FAILURE TO NOTIFY OWNER OF PROP/DAMAGE (C/M)	C/M	250.00	26
F145	FAILURE TO OBEY LAWFUL ORDER (C/M)	C/M	250.00	NA
F120	FAILURE TO PAY TAXES (C/M)	C/M	250.00	26

F65	FAILURE TO PAY WAGES (C/M)	C/M	250.00	26
F67	FAILURE TO POSS MEDICAL EXAM CERTIFICATE	C/M	250.00	26
F110	FAILURE TO PROSECUTE (A/M)	A/M	PER JUDGE	26
F35	FAILURE TO PROVIDE FOR CHILD (E/F)	E/F	3000.00	20
F130	FAILURE TO RELINQUISH PHONE LINE (C/M)	C/M	250.00	26
F12	FAILURE TO RECORD TRANSACTION (PAWN) (A/M)	A/M	1500.00	26
F31	FAILURE TO RELINQ TPHONE LINE F/EMERG CALL	C/M	250.00	26
F25	FAILURE TO REPORT ACCIDENT (C/M)	C/M	250.00	NA
F70	FAILURE TO RETURN MILITARY PROPERTY (C/M)	C/M	1000.00	06
F76	FAILURE TO RETURN RENTAL VEHICLE (E/F)	E/F	3000.00	07A
F71	FAILURE TO RETURN UNIFORMS (C/M)	C/M	250.00	06
F30	FAILURE TO SUPPORT DISABLED SPOUSE (C/M)	C/M	500.00	20
F55	FAILURE TO YIELD TO EMERGENCY EQUIPMENT	C/M	500.00	NA
F3	FAILURE/REPORT HEALTH DEPT FOR TREATM (STD)	C/M	250.00	17
F10	FALSE FIRE ALARM (A/M)	A/M	2000.00	26
F8	FALSE ID/STATEMENT SHOW AGE 21+ (C/M)	C/M	250.00	26
F2	FALSE IMPRISONMENT (A/M)	A/M	2500.00	26
F62	FALSE IMPRISONMENT (E/F)	E/F	3500.00	26
F100	FALSE REPORT/INFO TO OFFICER (~~A/M~~) D/F	~~A/M~~	~~3500.00~~ 1000.00	26
F101	FALSE REPORT/INFO TO OFFICER (~~E/F~~) C/F	~~E/F~~	~~5000.00~~ 2500.00	26
F9	FLIGHT TO AVOID (FEDERAL CHARGE)		CALL FED	26
F90	FORGERY (E/F)	E/F	3000.00	10
F15	FORGERY (CREDIT CARD) (A/M)	A/M	2500.00	10
F20	FORGERY (TRANSFER OF FORGED PAPER) (A/M)	A/M	2500.00	10
F93	FORGERY:$10,000-$60,000 (C/F)	C/F	5000.00	10
F91	FORGERY:$1,000 OR LESS (E/F)	E/F	3000.00	10
F92	FORGERY:$1,000-$10,000 (D/F)	D/F	3500.00	10
F94	FORGERY:$60,000 & UP (B/F)	B/F	10000.00	10
I53	FRAUD USE OF CREDIT CARD:$10,000-$60,000 (C/F)	C/F	5000.00	06
I52	FRAUD USE OF CREDIT CARD:$1,000-$10,000 (D/F)	D/F	3000.00	06
I50	FRAUD USE OF CREDIT CARD:$500 OR LESS (A/M)	A/M	2000.00	06
I51	FRAUD USE OF CREDIT CARD:$500-$1,000 (E/F)	E/F	2500.00	06
I54	FRAUD USE OF CREDIT CARD:$60,000 & UP (B/F)	B/F	10000.00	06
F118	FRAUD/FALSE INSUR CLAIM:$10,000-$60,000 (C/F)	C/F	5000.00	06

EXHIBIT TO COMPLAINT

F117	FRAUD/FALSE INSUR CLAIM:$1,000-$10,000 (D/F)	D/F	4000.00	06
F115	FRAUD/FALSE INSUR CLAIM:$500 OR LESS (A/M)	A/M	2500.00	06
F80	FRAUD/FALSE INSUR CLAIM:$500-$1,000 (E/F)	E/F	3000.00	06
F119	FRAUD/FALSE INSUR CLAIM:$60,000 & UP (B/F)	B/F	7500.00	06
F95	FRAUD;FORGE PRESCRIPTION (D/F)	D/F	4000.00	10
F105	FRAUDULENT USE/OBTAIN OF DRIVERS LICENSE	C/M	250.00	11
F45	FUGITIVE FROM JUSTICE (E/F)	E/F	NO BOND	26
G10	GAMBLING (C/M)	C/M	250.00	19
615	GAMBLING PROMOTION (B/M)	B/M	1000.00	19
G11	GAMBLING PROMOTION:AGGRAVATED (E/F)	E/F	3000.00	19
G12	GAMBLING POSS/DEVICES OR RECORD (B/M)	B/M	1000.00	19
G20	GAMING (PROMOTION) (B/M)	B/M	500.00	19
H3	HABITUAL.OFFENDER:MOTOR VEHICLE (E/F)	E/F	3000.00	NA
H5	HARASSING/THREATENING PHONE CALLS (A/M)	A/M	2500.00	26
H1	HINDERING SECURED CREDITORS (E/F)	E/F	2500.00	06
H10	HITCH HIKING ON INTERSTATE (C/M)	C/M	PER TROOPER	26
M4	HOMICIDE:ATTEMPTED MURDER (A/F)	A/F	15000.00	04C
M20	HOMICIDE:CRIMINALLY NEGLIGENT (E/F)	E/F	3000.00	01B
M5	HOMICIDE:FIRST DEGREE MURDER (A/F)	A/F	25000.00	01A
M10	HOMICIDE:SECOND DEGREE MURDER (A/F)	A/F	20000.00	01A
M105	HOMICIDE:RECKLESS (E/F)	E/F	3000.00	01B
H20	HOMICIDE:VEHICULAR (C/F)	C/F	10000.00	01A
H21	HOMICIDE:VIABLE FETUS AS VICTIM		PER JUDGE	01A
M15	HOMICIDE:VOLUNTARY MANSLAUGHTER (C/F)	C/F	7500.00	01A
H25	HOMOSEXUAL ACTS (C/M)	C/M	250.00	17
H51	HUNTING IN CLOSED SEASON (C/M)	C/M	250.00	26
H50	HUNTING/FISHING W/OUT LICENSE (C/M)	C/M	CITATION	26
I100	IDENTITY THEFT (D/F)	D/F	3500.00	06
I45	ILLEGAL POSS OF CREDIT CARD (B/M)	B/M	1000.00	06
I40	IMPERSONATION OF LAW OFFICER (A/M)	A/M	2500.00	26
I05	IMPROPER DISPOSITION OF BODY (A/M)	A/M	2000.00	26
I35	IMPROPER PASSING (C/M)	C/M	CITATION	NA
155	IMPROPERLY ON SCHOOL PROPERTY (A/M)	A/M	1000.00	26
115	INCEST (C/F)	C/F	10000.00	17

EXHIBIT TO COMPLAINT

I25	INDECENT EXPOSURE (B/M)	B/M	1000.00	17
I27	INDECENT EXPOSURE:FELONY (E/F)	E/F	2000.00	17
I26	INDECENT EXPOSURE:VICTIM UNDER 13 YOA (A/M)	A/M	2550.00	17
I4	INHALE/SELL/GIVE/POSS/GLUE, PAINT, GAS, ETC	A/M	2500.00	NA
I3	INHALE/SELL/GIVE/POSS/GLUE, PAINT, GAS, ETC	E/F	3500.00	NA
I20	INSTANTER CAPIAS (FELONY) (C/F)	C/F	5000.00	26
I21	INSTANTER CAPIAS (MISD) (A/M)	A/M	2500.00	26
I30	INTERFERING WITH AN OFFICER (A/M)	A/M	2000.00	26
K25	KIDNAPPING (C/F)	C/F	7500.00	20
K5	KIDNAPPING:AGGRAVATED (A/F)	A/F	15000.00	20
K26	KIDNAPPING:ATTEMPTED (C/F)	C/F	7500.00	20
K30	KIDNAPPING:ESPECIALLY AGG. (A/F)	A/F	25000.00	20
V5	LASER POINTER VIOLATION (A/M)	A/M	1500.00	NA
L12	LEAVING FIRE NEAR WOODLAND UNATTENDED	B/M	1000.00	26
L40	LEAVING SCENE OF ACCIDENT (BODILY INJURY)	A/M	2500.00	08
L35	LEAVING SCENE OF ACCIDENT (PROPERTY DAMAGE)	C/M	2500.00	08
61	LITTER HAULING (B/M)	B/M	500.00	26
L60	LITTERING (C/M)	C/M	250.00	26
L25	LOITERING (C/M)	C/M	250.00	25
L30	LOOTING (C/M)	C/M	250.00	06
L3	LOTTERIES/CHAIN LETTERS/PYRAMID CLUBS (A/M)	A/M	1500.00	19
L2	LOTTERIES/CHAIN LETTERS/PYRAMID CLUBS (B/M)	B/M	1000.00	19
L1	LOTTERIES/CHAIN LETTERS/PYRAMID CLUBS (C/M)	C/M	250.00	19
L4	LOTTERIES/CHAIN LETTERS/PYRAMID CLUBS (E/F)	E/F	3000.00	19
M7	MAILBOX TAMPERING:DAMAGE/DEFACEMENT (B/M)	B/M	1000.00	14
M95	MAINTAIN STRUCTURE F/USE OF CONTROLELD SUBST.	D/F	3000.00	18
M1	MANUFACTURE OF ALCOHOLIC BEVERAGES (A/M)	A/M	2000.00	22
M100	MANUFACTUREING MARIJUANA OVER 500 PLANTS	A/F	25000.00	18H\
P101	MFG/DELIV/POSS/SALE/CONSPI LIST LB DRUGS (A/F)	A/F	15000.00	18E
P102	MFG/DELIV/POSS/SALE/CONSPI LIST LB DRUGS (B/F)	B/F	10000.00	18E
P60	MFG/DELIV/SALE/POSS SCHEDULE I (B/F)	B/F	10000.00	18E
P65	MFG/DELIV/SALE/POSS SCHEDULE II (C/F)	C/F	5000.00	18E
70	MFG/DELIV/SALE/POSS SCHEDULE III (D/F)	D/F	5000.00	18G

P75	MFG/DELIV/SALE/POSS SCHEDULE IV (D/F)	D/F	5000.00	18H
P80	MFG/DELIV/SALE/POSS SCHEDULE V (E/F)	E/F	5000.00	18E
P71	MFG/DELIV/SALE/POSS SCHEDULE VI (E/F)	E/F	4000.00	18H
P85	MFG/DELIV/SALE/POSS SCHEDULE VII (E/F)	E/F	3000.00	18G
P72	MFE/DELIV/SALE/POSS MARIJ. OVER 10 LB (D/F)	D/F	5000.00	18H
P150	MFG/DELIV/SALE/POSS/CONSPI SALE COCAINE (B/F)	B/F	10000.00	18E
M3	MFG/SALE/POSS OF FARM IMPLEMENT W/O SER. NO.	A/M	2000.00	06
M75	MILITARY DESERTION (E/F)	E/F	HOLD/MPs	26
M46	MISAPPLICATION OF CONTRACT PMTS (E/F)	E/F	3000.00	06
M45	MISAPPROPRIATION OF CONTRACT FUNDS (A/M)	A/M	2000.00	06
M12	MISAPPROPRIATION OF RENTAL PROPERTY (A/M)	A/M	2000.00	06
M50	MISCELLANEOUS			26
M2	MISREP MILEAGE ON USED VEHICLE ODOMETER	A/M	1000.00	11
N10	NEGLECT OF DUTY (C/M)	C/M	250.00	26
N5	NEGLIGENT BURING (C/M)	C/M	250.00	26
N2	NON-PAYMENT OF FINE BY DEFENDANT (C/M)	C/M	250.00	26
N1	NON-RESIDENT DRIVING W/SUSP/REVOK/LIC	B/M	1000.00	NA
N15	NONSUPPORT OF WIFE/CHILD (A/M)	A/M	2000.00	20
N16	NONSUPPORT OF WIFE/CHILD:FLAGRANT (E/F)	E/F	3000.00	20
O2	OBSCENE SALE/LOAN MATERIAL TO MINOR (A/M)	A/M	2500.00	17
O3	OBSTRUCTING HIGHWAY/PASSAGEWAY (C/M)	C/M	250.00	26
O15	OBTAINING NARCOTICS BY FRAUD (E/F)	E/F	3000.00	11
O20	OVERTAKING AND PASSING SCHOOL BUS (B/M)	B/M	1000.00	NA
P41	PERJURY (A/M)	A/M	1500.00	26
P210	PETITION TO ESTABLISH PATERNITY			20
P195	PORNOGRAPHY (USE OF MINORS) (B/F)	B/F	10000.00	17
P141	POSS ALCOHOL ON STATE PROPERTY (B/M)	B/M	500.00	22
W25	POSS HANDGUN WHILE UNDER THE INFLUENCE	A/M	2500.00	15
P200	POSS OF ALTERED LIC TAGS (A/M)	A/M	2000.00	26
P120	POSS OF GAMBLING DEVICE (B/M)	B/M	1500.00	19C
P76	POSS OF LEGEND DRUGS W/O PRESCRITION (C/M)	C/M	500.00	18
P142	POSS OF LOADED FIREARM ON STATE PROPERTY	B/M	1500.00	15
P90	POSS OF MARIJUANA:SIMPLE (A/M)	A/M	2500.00	18F

EXHIBIT TO COMPLAINT

P95	POSS OF MARIJUANA:SIMPLE (3RD OFFENSE) (E/F)	E/F	3000.00	18F
P250	POSS OF SCHEDULE II (SIMPLE) (A/M)	A/M	2500.00	18E
P135	POSS OF WEAPON BY CONVICTED FELON (E/F)	E/F	3500.00	15
P255	POSS OF ALCOHOL W/OUT REVENUE STAMP	A/M	1500.00	22
C15	POSS/FIREARM WHERE ALC BEV SERV/SOLD/CONSUM	A/M	2500.00	15
P12	POSS/ILLEGAL TAKING/DESTRUCTION OF WILDLIFE	C/M	500.00	26
P100	POSS/SALE/DELIV MARIJUANA (1 OZ-10 LBS) (E/F)	E/F	3000.00	18B
P105	POSS/SALE/DELIV MARIJUANA (10 LBS-70 LBS) (D/F)	D/F	5000.00	18B
P106	POSS/SALE/DELIV MARIJUANA (OVER 70 LBS) (B/F)	B/F	10000.00	18B
P115	POSS/SALE/DELIV OF HASHISH (2-15 LBS) (C/F)	C/F	4000.00	18E
P110	POSS/SALE/SELIV OF HASHISH (UNDER 2 LBS) (E/F)	E/F	3000.00	18E
P160	POSS/SALE/DELIV OF MARIJUANA (E/F)	E/F	4000.00	18B
P231	POSS/TRANS ALCOH BEV BY PERSON UNDER 21 YOA	A/M	CITATION	22
P55	POSSESSION OF COCAINE:SIMPLE (A/M)	A/M	2500.00	18E
P245	POSSESSION OF SCHEDULE I (SIMPLE) (A/M)	A/M	2500.00	18H
P225	POSSESSION OF SCHEDULE III (SIMPLE) (A/M	A/M	2500.00	18H
P240	POSSESSION OF SCHEDULE IV (SIMPLE) (A/M)	A/M	2500.00	18H
P260	POSSESSION OF SCHEDULE V (SIMPLE) (A/M)	A/M	1000.00	18H
P1	POSSESSION OF STILL (B/M)	B/M	1500.00	22
P220	POSSESSION OF VALIUM (SIMPLE) (A/M)	A/M	2500.00	18H
P13	PRACTICE LAW WITHOUT LICENSE (A/M)	A/M	1500.00	11
P2	PROFANITY IN COURT (C/M)	C/M	250.00	24
P10	PROSTITUTION (B/M)	B/M	1500.00	16
P6	PROSTITUTION PATRON:W/100FT SCHOOL/CHURCH	A/M	2000.00	16
P4	PROSTITUTION PATRONIZING (B/M)	B/M	1500.00	16
P7	PROSTITUTION PROMOTING (E/F)	E/F	3000.00	16
P3	PROSTITUTION:W/100FT OF SCHOOL/CHURCH	A/M	2000.00	16
P125	PUBLIC INTOXICATION (C/M)	C/M	250.00	23
P9	PURCHASE ALCOH BEV FOR CHILD UNDER 21 (A/M)	A/M	1500.00	22
W40	POSSESSION/TRANSPORTATION OF DEER UNTAGED	B/M	1000.00	NA
F14	PURCHASE FROM MINORS (SCRAP METAL) (C/M)	C/M	250.00	26
P11	PURCHASE/REC/POSS ALCOHOL UNDER 21 (A/M)	A/M	1500.00	26
R140	RABIES ANIMAL CONTROL VIOLATION (C/M)	C/M	250.00	26
R15	RAPE (B/F)	B/F	15000.00	02A

EXHIBIT TO COMPLAINT

R51	RAPE OF CHILD (UNDER 13 YOA) (A/F)	A/F	25000.00	02A
R41	RAPE:AGGRAVATED (A/F)	A/F	25000.00	02A
R40	RAPE:AGGRAVATED (CHILD UNDER 13 YOA) (A/F)	A/F	25000.00	02A
R12	RAPE:ATTEMPTED (B/F)	B/F	12500.00	02B
R10	RAPE:FORCE ONLY (B/F)	B/F	15000.00	02A
R14	RAPE:SPOUSAL (C/F)	C/F	4000.00	17
R55	RAPE:STATUTORY (E/F)	E/F	3500.00	17
R46	RECEIV/POSS/TRANS OF ALCOH BEV (A/M)	A/M	2500.00	22
R30	RECEIVING PROPERTY U/FALSE PRETENSE (E/F)	E/F	3000.00	13
R1	RECKLESS BURING (A/M)	A/M	2500.00	26
R80	RECKLESS DRIVING (B/M)	B/M	1000.00	NA
R2	RECKLESS ENDANGERMENT (A/M)	A/M	2500.00	04E
R4	RECKLESS ENDANGERMENT (W/WEAPON) (E/F)	E/F	3000.00	04C
R100	REFUSING BLOOD ALCOHOL TEST.			
R109	REFUSING TO SIGN Citation	C/M	500.00 250.00	21
R95	REGISTRATION VIOLATION (C/M)	C/M	CITATION	26
R3	REPORT CREDIT CARD LOST/STOLEN/MISLAID (B/M)	B/M	1000.00	06
R86	RESIST STOP/FRISK/HALT/SEARCH OR INTERFERE	A/M	1000.00	24
R87	RESIST STOP/FRISK/HALT/SEARCH OR INTERFERE	B/M	1000.00	24
R84	RESISTING ARREST (A/M)	A/M	1500.00	24
R85	RESISTING ARREST (B/M)	B/M	10000.00	24
R25	RETALIATION FOR PAST ACTION (E/F)	E/F	1500.00	24
R18	RIOT (A/M)	A/M	1000.00	24
R20	RIOT:AGGRAVATED (E/F)	E/F	3000.00	24
R19	RIOT:INCITING TO (A/M)	A/M	1000.00	24
R22	ROBBERY (C/F)	C/F	7500.00	03D
R21	ROBBERY:AGGRAVATED (B/F)	B/F	10000.00	03C
R125	ROBBERY:ATTEMPTED (C/F)	C/F	7500.00	03C
R11	ROBBERY:ESPECIALLY AGGRAVATED (A/F)	A/F	15000.00	03A
T75	SALE OF TOBACCO PRODUCTS TO MINORS (A/M)	A/M	500.00	NA
C125	SALE/DELIV/DISTRIB/COUNTERFEIT CONTROL SUB	A/M	2500.00	18
C105	SALE/DELIV/DISTRIB/COUNTERFEIT CONTROL SUB	E/F	3000.00	18
S120	SEATBELT VIOLATION	C/M		NA
S10	SELLING BEER TO PERSON UNDER 21 (A/M)	A/M	1500.00	22
S75	SELLING INTOXICATING LIQUOR TO MINOR (A/M)	A/M	1500.00	22

EXHIBIT TO COMPLAINT

S110	SEPTIC TANK INSTALL W/O PERMIT (C/M)	C/M	500.00	26
S15	SERIAL NUMBER:ALTERATION OF (A/M)	A/M	1000.00	11
S2	SETTING FIRE TO PERSONAL PROP OR LAND (E/F)	E/F	3000.00	09
S1	SETTING FIRES AT CERTAIN TIMES W/O PERMIT	C/M	250.00	26
S05	SEX OFFENSES (BESTIALITY) (A/M)	A/M	2500.00	17
S125	SEXUAL BATTERY BY AUTHORITY FIGURE (C/F)	C/F	5000.00	17
R115	SEXUAL BATTERY (E/F)	E/F	4000.00	02A
R105	SEXUAL BATTERY:AGGRAVATED (B/F)	B/F	20000.00	02A
R13	SEXUAL BATTERY:AGGRAVATED (CHILD UNDER 13)	B/F	20000.00	02B
R110	SEXUAL BATTERY:ATTEMPTED (E/F)	E/F	4000.00	02B
R17	SEXUAL BATTERY:SPOUSAL (D/F)	D/F	5000.00	17
S7	SEXUAL EXPLOITATION OF MINOR (E/F)	E/F	3000.00	17
S6	SEXUAL EXPLOITATION OF MINOR:AGGRAVATED	C/F	7500.00	17
S13	SHOW CAUSE ORDER		PER JUDGE	26
P77	SIMPLE POSS/SALE/GIVEAWAY OF LEGEND DRUGS	C/M	500.00	18
S16	SOLICITATIONOF MINOR TO ENGAGE IN CONDUCT	E/F	3000.00	17
S85	SPEEDING (C/M)		CITATION	NA
S11	STALKING (A/M)	A/M	2500.00	04E
S12	STALKING (SUBSEQUENT) (E/F)	E/F	4000.00	04E
S115	STATE PARK VIOLATIONS (C/M)	C/M	250.00	26
S106	STATE PRISONER AWAITING TRANSFER TO PEN		NO BOND	NA
S4	STORAGE OF LIQUOR FOR SALE (A/M)	A/M	100.00	22
S90	SUICIDE			NA
S95	SUICIDE (ATTEMPTED)			NA
S96	SUICIDE (THREATENING)			NA
S100	SUPRESSION HEARING		NO BOND	26
S105	SUSPENDED SENTENCE HEARING	E/F	NO BOND	26
T1	T'PORT OF ALCOH BEV BY COMMON CARRIER	A/M	2000.00	22
T2	TAKING FISH CAUGHT BY ANOTEHR (C/M)	C/M	250.00	26
T3	TAMPERING W/CONSTRUCT SIGNS/BARRICADE (A/M)	A/M	2500.00	26
T4	TAMPERINGW/FABRICATING EVIDENCE (C/F)	C/F	3000.00	26
T50	TAMPERING WITH UTILITY DEVICES (C/M)	C/M	250.00	14
T90	THEFT OF MERCHANDISE:$500.00 OR LESS (A/M)	A/M	2000.00	06
T91	THEFT OF MERCHANDISE:$500 - $1,000 (E/F)	E/F	3000.00	06

T92	THEFT OF MERCHANDISE:$1,000-$10,000 (D/F)	D/F	3500.00	06
T93	THEFT OF MERCHANDISE:$10,000-$60,000 (C/F)	C/F	5000.00	06
T94	THEFT OF MERCHANDISE:$60,000 AND UP (B/F)	B/F	7500.00	06
T9	THEFT OF PROP:$10,000-$60,000 (C/F)	C/F	5000.00	06
T8	THEFT OF PROP:$1000-$10,000 (D/F)	D/F	3500.00	06
T6	THEFT OF PROP:$500 OR LESS (A/M)	A/M	2000.00	06
T7	THEFT OF PROP:$500-$1,000 (E/F)	E/F	3000.00	06
T11	THEFT OF PROP:$60,000 & UP (B/F)	B/F	7500.00	06
T17	THEFT OF SERVICES:$1,000-$10,000 (D/F)	D/F	3500.00	06
T14	THEFT OF SERVICES:$10,000-$60,000 (C/F)	C/F	5000.00	06
T12	THEFT OF SERVICES:$500.00 OR LESS (A/M)	A/M	2000.00	06
T13	THEFT OF SERVICES:$500-$1,000. (E/F)	E/F	3000.00	06
T16	THEFT OF SERVICES:$60,000. & UP (B/F)	B/F	7500.00	06
T69	THEFT:ATTEMPTED (A/M)	A/M	2000.00	06
E10	THEFT:EMBEZZLEMENT (FELONY) (C/F)	C/F	5000.00	12
E5	THEFT:EMBEZZLEMENT (MISD) (A/M)	A/M	2500.00	12
T25	TRAFFIC OFFENSE:MOVING VIOLATION (C/M)	C/M	CITATION	NA
T30	TRAFFIC OFFENSE:NON MOVING (C/M)	C/M	CITATION	NA
T10	TREASON (A/F)	A/F	15000.00	26
T65	TRESPASS ON RAILROAD (C/M)	C/M	250.00	26
U5	UNAUTHORIZED POSS OF EXPLOSIVES (A/M)	A/M	2500.00	26
J5	UNAUTHORIZED USE/AUTO OF OTHER VEHICLE (JUV)	A/M	1500.00	07A
J10	UNAUTHORIZED USE/AUTO OF OTHER VEHICLE (A/M)	A/M	1500.00	07A
U2	UNLAW/LICENSEE/SELL/PRO/ALCOH UNDER 21 YOA	A/M	1500.00	22
U8	UNLAWFUL ACTS:WATER & SEWAGE (C/M)	C/M	250.00	26
U1	UNLAWFUL DISPOSAL OF RAW SEWAGE (C/M)	C/M	250.00	26
U35	UNLAWFUL PHOTOGRAPHING/VIOL. OF PRIVACY	A/M	2500.00	17
P165	UNLAWFUL POSS. DRUG PARAPHERNALIA (A/M)	A/M	2000.00	26
U15	UNLAWFUL POSS OF INTOXICATING LIQUOR (C/M)	C/M	250.00	22
U45	UNLAWFUL REMOVAL OF LICENSE PLATE (A/M)	A/M	1500.00	06
U3	UNLAWFUL SALE OF ALCOHOLIC BEVERAGE (B/M)	B/M	500.00	22
T80	UNLAWFL TATTOOING OF A MINOR (A/M)	A/M	1500.00	20
U30	UNLAWFUL USE OF 911 (C/M)	C/M	250.00	26
U6	USE OF FALSE IDENTIFICATION (C/M)	C/M	250.00	26

EXHIBIT TO COMPLAINT

U25	USE OF WEAPON TO COMMIT FELONY (E/F)	E/F	3000.00	15
U12	USURY:WILLFUL COLLECT (MISD) (A/M)	A/M	2000.00	06
U40	UNLAWFUL ALLOW MINOR TO LOITER/ALCOHOL	A/M	1500.00	22
V15	VAGRANCY (C/M)	C/M	250.00	25
V48	VANDALISM:$10,000-$60,000 (C/F)	C/F	5000.00	14
V47	VANDALISM:$1,000-$10,000 (D/F)	D/F	3000.00	14
V45	VANDALISM:$500 OR LESS (A/M)	A/M	2000.00	14
V46	VANDALISM:$500-$1,000 (E/F)	E/F	2500.00	14
V49	VANDALISM:$60,000 & UP (B/F)	B/F	7500.00	14
[redacted]	[redacted] See Crim Contempt	E/F	[redacted]	26
V35	VIOL OF RESTRAINING ORDER (E/F)	E/F	3500.00	20
C140	VIOLATION OF CHILD RESTRAINT (C/M)	C/M	250.00	NA
I60	VIOLATION OF IMPLIED CONSENT LAW		500.00	26
O25	VIOLATION OF OPEN TITLE (C/M)	C/M	500.00	26
V30	VIOLATION OF PAROLE (E/F)	E/F	PER JUDGE	26
P14	VIOLATION OF PAWNBROKERS ACT (A/M)	A/M	1500.00	NA
V20	VIOLATION OF PROBATION (E/F)	E/F	PER JUDGE	26
'32	VIOLATION OF PROBATION (CIRCUIT CT/FELONY)	E/F	PER JUDGE	26
V31	VIOLATION OF PROBATION (CIRCUIT CT/MISD)	A/M	PER JUDGE	26
V1	VIOLATION OF PROBATION (GEN.SESS/MISD) (A/M)	A/M	2500.00	26
V100	VIOLATION OF VACCINATION (C/M)	C/M	500.00	NA
V50	VIOLATION OF WHEEL TAX (C/M)	C/M	CITATION	NA
V55	VIOLATION OF ZONING ORD. (C/M) MSD-misc- Viol. of Tapa law A/m	C/M	500.00	26
V56	VIOLATION:OPEN CONTAINER LAW (C/M)	C/M	500.00	22
V65	VIOLATION: FINANCIAL RESPONS.LAW	C/M	250.00	
W8	WEAPON:CARRYING DURING JUDICIAL PROCEEDING	E/F	3500.00	15
W1	WEAPON:CARRY IN PUBLIC RECREATIONAL AREA	E/F	3500.00	15
W2	WEAPON:CARRY ON SCHOOL GROUNDS (E/F)	E/F	3500.00	15
W17	WEAPON:DISCHARGE W/IN CITY LIMITS (A/M)	A/M	2500.00	15
W35	WEAPON:POSSESSION OF PROHIBITED WEAPON (E/F)	E/F	3000.00	15
W11	WEAPON:PROHIBITED (A/M)	A/M	2500.00	15
W100	WEAPON:PROVIDING TO JUVENILE (D/F)	D/F	3500.00	15
W5	WEAPON:PROVIDING TO JUVENILE (A/M)	A/M	2500.00	15
W4	WEAPON:UNLAWFUL POSS BY CONVICT FELON (E/F)	E/F	3500.00	15
12	WEAPON:UNLAW POSS COMM OF CRIME (E/F)	E/F	3500.00	15

Violation of bond Conditions 20,000

EXHIBIT TO COMPLAINT

W13	WEAPON:UNLAW POSS IN ESCAPE OF CRIME (E/F)	E/F	3500.00	15
W7	WEAPON:UNLAW POSS OF FIREARM (C/M)	C/M	500.00	15
W6	WEAPON:UNLAW POSS OF KNIFE (C/M)	C/M	500.00	15
W30	WEAPON:UNLAW SALE/LOAN/GIFT (A/M)	A/M	2500.00	15
W3	WEAPON:UNLAWFUL POSS IN PUBLIC (A/M)	A/M	2000.00	15
W15	WELFARE FRAUD (FELONY) (E/F)	E/F	3000.00	11
W16	WELFARE FRAUD (MISD) (A/M)	A/M	2500.00	11
W9	WILDLIFE VIOLATION (C/M)	C/M	500.00	26
W50	WILDLIFE VIOLATION (B/M)	B/M	1000.00	26
W51	WILDLIFE VIOLATION (A/M)	A/M	1500.00	26
W14	WILLFUL INJURY BY EXPLOSIVES (A/F)	A/F	1500.00	04C
W10	WORKHOUSE MITTIMUS (A/M)	A/M	NT OF FINES	26
W23	WORTHLESS CHECK:$10,000-$60,000 (C/F)	C/F	5000.00	06
W22	WORTHLESS CHECK:$1,000-$10,000 (D/F)	D/F	3500.00	06
W20	WORTHLESS CHECK:$500 OR LESS (A/M)	A/M	1000.00	06
W21	WORTHLESS CHECK:$500-$1,000 (E/F)	E/F	2000.00	06
W24	WORTHLESS CHECK:$60,000 & UP (B/F)	B/F	5000.00	06

rev. 12/01

Anexiety
Asthma
Cholesterol
Diabetes
Diuretic
Emphysema
Hypoglycemia
Hypertension
Psychotic
Schizophrenia
Seizure
Thyroid
Tuberculosis

MITTIMUS COPYMATTE PRINTING, INC.

10:45pm **STATE OF TENNESSEE - RUTHERFORD COUNTY**

TO THE JAILER OF SAID COUNTY:

[redacted]

having been examined before me on a charge(s) of False Imprisonment $1500
Public Intox $250
Domestic $1500

and it appearing that such offense has been committed, and that there is sufficient cause to believe him guilty thereof, and he having failed to give bail as required.

You are therefore commanded to receive him into custody, and detain him until he is legally discharged.

This 3 day of NOVEMBER 20 12.

Length of residence in the community: 33yrs

Employment status, history and financial condition: self employed

Family ties and relationships: yes

Reputation, character and mental conditions: Anxiety

Prior criminal record, including prior releases on recognizance or bail: DUI, Public Intox

Identity of responsible members of the community who will vouch for defendant's reliability:

The nature of the offense and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of nonappearance: Ø

Any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear:

* 12 hr hold
* Out on bond

Hx [redacted]

119076

Rx [redacted]

JUDGE OF COURT OF GENERAL SESSIONS AND JUVENILE COURT

Bond $9,750

FEDERAL PRETRIAL RISK ASSESSMENT INSTRUMENT (PTRA)

DEFENDANT'S NAME: _____ DATE OF ASSESSMENT: _____

OFFICER: _____

PACTS #: _____

DISTRICT: _____

1.0 CRIMINAL HISTORY & CURRENT OFFENSE:

1.1. NUMBER OF FELONY CONVICTIONS

0=NONE
1=ONE TO FOUR
2=FIVE OR MORE

1.2. PRIOR FTAS

0=NONE
1=ONE
2=TWO OR MORE

1.3. PENDING FELONIES OR MISDEMEANORS

0= NONE
1=ONE OR MORE

1.4. CURRENT OFFENSE TYPE

0= THEFT/FRAUD, VIOLENT, OTHER
1=DRUG, FIREARMS, OR IMMIGRATION

1.5. OFFENSE CLASS

0=MISDEMEANOR
1=FELONY

1.6. AGE AT INTERVIEW

0= 47 OR ABOVE
1=27 TO 46
2=26 OR YOUNGER

TOTAL CRIMINAL HISTORY

2.0 OTHER FACTORS:

2.1 HIGHEST EDUCATION

0=COLLEGE DEGREE
1=HIGH SCHOOL DEGREE, VOCATIONAL, SOME COLLEGE
2=LESS THAN HIGH SCHOOL OR GED

2.2 EMPLOYMENT STATUS

CIRCLE APPROPRIATE ITEM BELOW AND RECORD SCORE IN BOX
0=EMPLOYED FULL TIME
0=EMPLOYED PART TIME
0=DISABLED AND RECEIVING BENEFITS
1=STUDENT/HOMEMAKER
1=UNEMPLOYED
1=RETIRED, ABLE TO WORK

2.3 RESIDENCE

0=OWN/PURCHASING
1=RENT, NO CONTRIBUTION, OTHER, NO PLACE TO LIVE

2.4 CURRENT DRUG PROBLEMS

1=YES
0=NO

2.5 CURRENT ALCOHOL PROBLEMS

A=YES
B=NO

2.6 CITIZENSHIP STATUS

0= US CITIZEN
1=LEGAL OR ILLEGAL ALIEN

2.7 FOREIGN TIES

A= YES
B= NO

2.7 (A) DOES THE DEFENDANT HAVE ANY OF THE FOLLOWING TIES TO A FOREIGN COUNTRY?

A= YES
B= NO

CIRCLE ALL THAT APPLY
FAMILY (PARENTS, SIBLINGS, COUSINS, ETC.)
SPOUSE
CHILDREN
SIGNIFICANT OTHER
BUSINESS RELATIONS
FRIENDS
OTHER
NO FOREIGN TIES

IF YES, WHAT COUNTRY OR COUNTRIES?

2.7 (B) DOES THE DEFENDANT MAINTAIN CONTACT WITH ANY INDIVIDUAL IN QUESTION 2.7(A)?

A= YES
B= NO

2.7 (C) IS THE DEFENDANT A CITIZEN OR RESIDENT OF A FOREIGN COUNTRY? IF YES, WHICH COUNTRY OR COUNTRIES? **(PLEASE INDICATE WHAT COUNTRY.)**

A= YES
B= NO

2.7 (D) DOES THE DEFENDANT POSSESS A VALID OR EXPIRED PASSPORT (EITHER U.S. OR FOREIGN)?

A= YES
B= NO

2.7 (E) DOES THE DEFENDANT HAVE ANY FINANCIAL INTERESTS (SUCH AS, PROPERTY, BANK ACCOUNTS, ETC.) OUTSIDE OF THE U.S.?

A= YES
B= NO

2.7 (F) HAS THE DEFENDANT TRAVELED OUTSIDE OF THE U.S.?

A= YES
B= NO

CIRCLE APPROPRIATE ITEM BELOW:
WITHIN THE PAST 1–5 YEARS
WITHIN THE PAST 6-10 YEARS
NO FOREIGN TRAVEL

2.7 (G) WAS TRAVEL IN 2.7(F) FOR ANY OF THE FOLLOWING?

A= YES
B= NO

CIRCLE APPROPRIATE ITEM BELOW:
A=PLEASURE
B=BUSINESS
C=BOTH
D=NOT APPLICABLE

TOTAL OTHER

TOTAL SCORE
[ITEMS 1.1 – 2.7(G)]

Likelihood of outcomes based on event occurring during pretrial period.

Risk Category	N	%	Risk Score	FTA	NCA	FTA/NCA	TV	FTA/NCA/TV
Category 1	52,677	29	0-4	1%	1%	2%	1%	3%
Category 2	52,653	29	5-6	3%	3%	5%	4%	9%
Category 3	49,920	27	7-8	4%	5%	10%	9%	18%
Category 4	21,779	12	9-10	6%	7%	15%	15%	28%
Category 5	4,710	3	11+	6%	10%	20%	19%	35%

IRB APPROVAL

From: Emily Born [Emily.Born@mtsu.edu]
Sent: Thursday, February 23, 2012 10:07 AM
To: Jerry Gonzalez
Subject: RE: IrB

Ok- yes, as long as all info is publically available you should be fine….thanks!

Emily Born
Compliance Officer
615-494-8918

From: Jerry Gonzalez [mailto:jgonzalez@jglaw.net]
Sent: Thursday, February 23, 2012 10:06 AM
To: Emily Born
Subject: RE: IrB

Correct. One planned interview is of the head of the Pretrial Risk Assessment Program with the U.S. Administrative Office of the Courts in Wash. D.C. The other is possibly the director of a similar pretrial risk assessment program for the State of Virginia. Otherwise, all interviews (really depositions) have been done as part of prior litigation and not for the purpose of research, either of public officials or party plaintiffs.

If my committee feels that I need to interview others that are NOT public officials, then I will revisit the issue with you.

Jerry Gonzalez
Jerry Gonzalez PLC
2441-Q Old Fort Parkway
No. 381
Murfreesboro TN 37128
615-360-6060 off.
615-225-22212 alt.
615-225-2213 fax.
615-604-0520 cel.
jgonzalez@jglaw.net
gag2i@mtmail.mtsu.edu
www.jglaw.net

From: Emily Born [mailto:Emily.Born@mtsu.edu]
Sent: Thursday, February 23, 2012 9:50 AM
To: Jerry Gonzalez
Subject: RE: IrB

Now these that you "will" interview are still on public record correct??

Emily Born
Compliance Officer
615-494-8918

From: Jerry Gonzalez [mailto:jgonzalez@jglaw.net]
Sent: Thursday, February 23, 2012 9:35 AM

To: Emily Born
Subject: RE: IrB

That was fast! Excellent. I will let you know if anyone I intend to interview is NOT a public official and the interview limited to his or her official duties. Likewise if I intend to use any prior interview of a non-public official. Thanks.

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From: Emily Born [mailto:Emily.Born@mtsu.edu]
Sent: Wednesday, February 22, 2012 4:09 PM
To: Jerry Gonzalez
Subject: IrB

Hey Jerry-

Ok was thinking it over and spoke to our chairmen- this is all publically available info☺ NO IRB required!

Emily Born
Compliance Officer
615-494-8918