ANNUAL REVIEWS

Annual Review of Criminology

Bail and Pretrial Justice in the United States: A Field of Possibility

Joshua Page[1] and Christine S. Scott-Hayward[2]

[1]Department of Sociology, University of Minnesota, Minneapolis, Minnesota 55455, USA; email: page@umn.edu

[2]School of Criminology, Criminal Justice, and Emergency Management, California State University, Long Beach, Long Beach, California 90840, USA; email: christine.scott-hayward@csulb.edu

Annu. Rev. Criminol. 2022. 5:91–113

The *Annual Review of Criminology* is online at criminol.annualreviews.org

https://doi.org/10.1146/annurev-criminol-030920-093024

Keywords

bail, bail bond, poverty, pretrial justice, social control, politics

Abstract

In this review of scholarship on bail and pretrial justice in the United States, we analyze how the field of bail operates (and why it operates as it does), focusing on its official and unofficial objectives, core assumptions and values, power dynamics, and technologies. The field, we argue, provides extensive opportunities for generating revenue and containing, controlling, and changing defendants and their families. In pursuit of these objectives, actors consistently generate harms that disproportionately affect low-income people of color and amplify social inequalities. We close with an analysis of political struggles over bail, including current and emerging possibilities for both reformist and radical change. In this, we urge scholars toward sustained engagement with people and organizations in criminalized communities, which pushes scholars to reconsider our preconceptions regarding safety, justice, and the potential for systemic change and opens up new avenues for research and public engagement.

INTRODUCTION

Bail is a big deal. But it has not always been, at least among most social scientists.[1] In recent years, however, several developments have drawn sustained scholarly attention to the issue. First, the number of people in local jails shot up from 182,288 in 1980 to 740,700 in 2016, fueling overcrowding and straining budgets (Pew Charit. Trusts 2021, Sentencing Project 2020). Second, bail-related injustices became front-page news. For example, the tragic story of Kalief Browder—a Black teenager who committed suicide after being detained for three years in jail for charges that were eventually dismissed—was the subject of a *New Yorker* profile (a finalist for the 2015 Pulitzer Prize in Feature Writing) and a six-part television documentary (Gonnerman 2014).

Third, and most importantly, community organizers, public interest lawyers, investigative journalists, and a mix of racial justice, civil liberties, and criminal legal reform organizations struggled successfully to make bail a political issue. In fact, without their efforts, the Browder case (or that of Sandra Bland, another Black defendant who could not afford bail and allegedly killed herself in jail) likely would not have become a public scandal. Now, heavy-hitters in politics and entertainment, from President Joe Biden and Vice President Kamala Harris to Jay-Z and John Legend, advocate for bail reform. Even some on the political right, such as US Senator Rand Paul, support changing the system.

As the political salience of bail in the United States has grown, so has social scientists' interest in the topic, resulting in high-quality scholarship by criminologists as well as economists, legal scholars, political scientists, and sociologists. When read alongside reports by government agencies and advocacy organizations (e.g., Color Change & ACLU 2017), the interdisciplinary scholarship offers a well-rounded understanding of US bail—sketching its history, legal framework, operations, and consequences. Taken as a whole, the literature provides critical insights into what we can think of as a field of bail—a relatively bounded sphere of social action with a particular set of positions, rules of engagement, and shared understandings. The field operates as an objective and subjective structure that shapes how actors understand and go about their business, producing durable patterns of cooperation and conflict (Bourdieu 1985, Martin 2003). The field is not timeless or static. Rather, it is continually made and remade through daily practice and political struggle.

Our goal in this article is to provide a synthetic review of the scholarship on bail and pretrial justice, which takes the field of bail as its focus. We seek to understand how the field operates (and why it operates as it does), focusing on its official and unofficial objectives, core assumptions and values, power dynamics, and technologies. Given that the racial politics of law and order have transformed American criminal justice in recent decades, we want to understand how they have altered the field of bail specifically. Furthermore, we aim to comprehend how the field—or rather, the legal and extralegal outcomes it produces—contributes to social inequalities, as well as how actors are working to alter the field in ways that make pretrial practices more just and equitable, and the possibilities for such transformation.

This review unfolds over six sections. In the first, we argue that social control has been a core objective of the field of bail since at least the 1950s. In the second section, we show how tough-on-crime politics altered the field in ways that made bail even more punitive, managerial, and disciplinary. Bail has contributed greatly to mass incarceration and mass supervision. In the third section, we turn to the second core objective of bail: revenue generation. We show that public policy and legal practice produce the conditions that allow bail bond companies (and their insurance providers) to generate profits, sketch the strategies that bail bond agents use to extract revenues

[1] Notable exceptions include Dill (1975), Feeley (1979), Flemming (1982), Foote (1954), and Goldkamp (1979).

from defendants and their families, and explore how these frontline workers make sense of their stigmatized work. In the fourth section, we explore research on the consequences of bail, showing that the field generates a series of harms that disproportionately affect low-income people of color. The fifth section focuses on political struggle, highlighting four strategies that actors use to alter the field and reform bail as well as the political and cultural obstacles they face in doing so. In the conclusion, we argue that sustained engagement with people and organizations in criminalized communities would push scholars to challenge our assumptions about the nature of justice and the prospects for change as well as explore new avenues for research and public engagement (on the concept of criminalized communities, see Clair 2021).

A few caveats: First, we focus on bail and pretrial justice in the United States. Although we draw on research from other countries to contextualize some of our claims, a thorough international comparative inquiry is beyond the scope of this review (for an overview of region- and country-specific practices, see Baradaran-Baughman 2018, Appendix 2; for a recent comparative analysis of the association between economic, political, and social factors and pretrial detention, see Schonteich 2021). Second, we do not address pretrial release in the immigration context; we simply cannot do the issue justice in the space of this article (Ryo 2018, Srikantiah 2018). Lastly, we offer a structural analysis, focusing on the common features of bail (or rather, the field of bail) that seem to produce common practices and outcomes across place. Therefore, we do not explore local variation in bail—an important and understudied issue (for exceptions, see Flemming 1982, Hood & Schneider 2019).

TOUGH ON CRIME AND THE HARDENING OF SOCIAL CONTROL

In 1975, Forrest Dill (1975, p. 642) published a remarkable qualitative study that challenged preconceptions about—and official descriptions of—bail. Bail's stated legal purpose at the time, Dill noted, was "to enable persons accused of crime to remain at liberty while preparing for trial, and the only lawful reason for requiring defendants to post bail [was] to insure their presence for required court appearances." However, he continued:

> . . .bail can be and in fact is routinely used by court officials for other purposes not recognized by law—to detain some defendants who are believed dangerous or likely to flee, to punish other defendants who are regarded as disrespectful or troublesome, and to elicit information or confession from still others. In other words, the bail system serves as the key instrument by which officials maintain control over persons arrested for crime.

Several years later, Malcolm Feeley published his landmark book, *The Process Is the Punishment*, based on in-depth research in a low-level court that handled misdemeanors and lesser felonies in New Haven, Connecticut. Like Dill, Feeley argued that the state, in effect, was sanctioning people preconviction. He meant this in two senses: First, legal actors sometimes used the bail process to punish defendants, especially those who seemed guilty but likely to evade conviction. Second, defendants experienced the preconviction process as punishment. How could they not? After all, they served time in jail, paid "fines" (Feeley's word) to bail bond companies, and found themselves pushed into a pretrial diversion program that "increases rather than decreases the harshness of the criminal process" and "represents a net expansion of social control when in comparison with the alternative of standard adjudication" (Feeley 1979, p. 234). In sum, Feeley convincingly showed that lower-court defendants often faced more punishment before conviction than after (see also Flemming 1982, Foote 1954) and that the punitive nature of the pretrial process led to a pattern of defendants declining to "invoke [all] of the adversarial options available to them" (Feeley 1979,

p. 241)—to avoid additional pretrial punishment, in other words, individuals gave up on fighting their cases.

Such classic studies, supported by confirmatory research in the years since, highlight an enduring feature of the field of bail: a shared understanding that bail's central purpose is to contain and control people who are accused of crimes. Several assumptions underlie this objective. First, defendants are unreliable and irresponsible and likely to miss court unless they are incarcerated, monitored in the community, or have a financial stake in showing up. Second, defendants accused of higher-level crimes and facing stiff punishment have extra motivation to evade justice and pose a threat to the public (higher still for those who have prior records). This second assumption helps explain the prevalence of bail schedules that tie presumptive bail amounts to charged offenses (Ottone & Scott-Hayward 2018) and, since at least the 1920s, why the seriousness of the charge has been the most important factor in determining whether a defendant is granted bail and how high it is set (Phillips 2012, Thomas 1976). Third, bail decisions are political. Judges and district attorneys, many of whom are elected, anticipate political blowback should defendants commit crimes while out on bail or fail to show up for court (especially in high-profile cases); moreover, the court may come under fire, creating broader political problems that can threaten court funding or ignite efforts to limit judicial discretion. This trio of assumptions regarding bail encourages risk-averse, conservative behavior, especially among the prosecutors and judges for whom restrictive social control presents a practical (if not necessarily ideological) strategy for managing political risk.

Returning to classic studies of bail keeps us from falling into a presentist trap, assuming that what exists today is novel and should be explained as such. Dill, Feeley, and others show that the coercive logic of bail runs deep; it did not originate in the 1980s or 1990s with the punitive turn in American criminal justice. Thus, in one respect, the story of bail is about continuity—a persistent inclination to use bail to control poor people accused of crimes. Yet it is also a tale of change: Bail has become even more punitive and disciplinary over the past four decades. To understand why, scholars suggest that we need to situate developments within the field of bail in relation to developments external to it—especially the racial politics of law and order, which permeated the country with renewed vigor in the second of the half of the twentieth century (Dabney et al. 2017, Goldkamp 1985).

In retrospect, 1984 was a pivot point in American bail. Congress passed the Bail Reform Act that year, making protection of public safety a formal purpose of federal bail and allowing judges to detain defendants they deemed dangerous—that is, likely to commit a crime if released while awaiting trial. Goldkamp (1985) places this law within a trend, starting with 1970 legislation permitting preventive detention in Washington, DC, and continuing through the occasional state-level passage of such laws, but stipulates that the Bail Reform Act was not just one of many laws. No, the "federal preventive detention law," Goldkamp (1985, p. 1) argued a year after its passage, "represents landmark legislation—if not for actually breaking new ground, at least for formally legitimizing the direction in bail, pretrial release and detention procedure in the United States innovated in the District of Columbia and a number of states during the 1970s."

The Bail Reform Act was bolstered by the 1987 Supreme Court ruling in *United States v. Salerno* (1987), which found pretrial detention constitutional, terming it regulation, not punishment. Following the ruling, Allen (2017, p. 653) explains, "states were apt to amend their bail statutes to mirror the federal policy established by the Supreme Court and detailed by the 1984 Act, allowing more arrestees to be detained because of potential dangerousness." Together, Feeley & Simon (1992) argue, the Bail Reform Act and the *Salerno* decision exemplified what they termed the new penology. Each advanced the objective of using bail to manage risky (i.e., dangerous) categories of defendants via surveillance and detention. The notion of dangerousness, itself both raced and classed, applied most directly to the underclass—Black and brown people in inner cities, who were

"viewed as permanently excluded from social mobility and economic integration," dependent on welfare, and prone to vice and crime (Feeley & Simon 1992, p. 467).[2] "The underclass," Feeley & Simon (1992, p. 467) expand, was positioned as a "dangerous class, not only for what any particular member may or may not do, but more generally for collective potential for misbehavior." The twin purpose of bail, then, was to contain and control the underclass and protect so-called law-abiding citizens inside and, especially, outside of the ghetto.

Crucially, the politics of law and order and its attendant legal changes did not directly transform pretrial practices and outcomes. Rather, they altered power dynamics, rules, and shared understandings within the field of bail, which, in turn, produced new patterns of pretrial practices and outcomes. For example, the tough new bail provisions enhanced prosecutors' position in the field, allowing them to more powerfully sway the courts toward pretrial punitiveness. Certainly, as far back as the early 1960s, scholars have shown that prosecutors enjoy the upper hand in bail negotiations. For example, Suffet's 1966 observational study of nearly 1,500 bail hearings in New York County reported that "the prosecutor's request for higher bail will achieve the desired results in over four out of five cases" (Suffet 1966, p. 325). But the political developments in the 1970s and 1980s further enhanced prosecutors' power to influence bail. New laws that mandated (or presumed) detention or financial bail for defendants charged with particular crimes essentially allowed prosecutors to set bail through their charging decisions. The proliferation of bail schedules functioned similarly. The typically vague and overly broad definitions of dangerousness and risk in the statutes granted prosecutors wide latitude in the application of those labels (Goldkamp 1985, p. 27; Wiseman 2014, p. 1352), and the legal turn toward risk management gave prosecutors' arguments additional symbolic weight. As "safety management" (Feeley & Simon 1992, p. 457) and "punishing dangerousness" (Robinson 2001) became core objectives throughout the penal field, crime victims (literally and figuratively) gained a more prominent position in court deliberations, political debate, and public culture (Garland 2001, Simon 2007), redoubling the sense that the prosecution should dominate bail negotiations.

Prosecutors' practical power depends in part on judges' willingness to make bail decisions in accordance with their claims about pretrial flight risk and dangers to the community. As the racial politics of law and order ramped up, judges gained strong incentives to view bail through the lens of dangerousness, speaking the language of public safety and heeding prosecutors' calls for restrictive pretrial control. Indeed, from the late 1960s forward, other actors within the field of bail (politicians, advocates, and community members) forcefully charged that judges were contributing to "the crime problem" by being too lenient on people convicted and accused of crimes (Bright 1997, Forman Jr. 2017, Zimring et al. 2001). Judges, these critics demanded, needed to detain or closely monitor dangerous defendants. Thus, actors and struggles in the field of bail made judges' decisions even more political in the late twentieth century.

Along with crime-victim organizations, law enforcement groups now threatened to expose liberal judges who allowed dangerous defendants to remain free pretrial. Police unions and district attorney organizations, among others, could threaten elected judges' careers—or at least make judges' lives difficult—by taking direct actions (e.g., sending mailers to voters) or collaborating with politicians or journalists eager to tell sensational stories about bail-jumpers and grisly crimes committed by defendants out on bail. This specter of political opposition creates an additional incentive for judges to cooperate with prosecutors: Judges typically have scant time and information

[2] Muhammad (2010) traces the tight coupling of "dangerousness" and blackness in the United States back to at least the late 1800s. The underclass discourse, then, further entrenched and updated this association, alleging that a pathological, antisocial culture thrives in race-class subjugated communities—and requires firm control.

when making bail decisions, and they cannot carefully or confidently determine whether defendants will harm others if released (Scott-Hayward & Fradella 2019); therefore, it makes practical sense to err on the side of (political) safety and side with prosecutors' recommendations regarding pretrial detention and high financial bails.

In the daily rituals of criminal courts, prosecutors and judges reinforce the coercive logic of bail. Through their arguments and decisions, they institutionalize dangerousness and public safety (even more than flight risk) as the guiding considerations in pretrial decision-making. But defense attorneys also contribute to this process. When they frame their arguments in terms of community safety, arguing, for example, that certain conditions (e.g., pretrial monitoring in lieu of detention or unaffordable bail) suffice to protect an alleged victim from the defendant, they are concurrently speaking the language of risk and promoting restrictive social control. And because of their subordinate position in the field, defense attorneys rarely challenge bail decisions, likely because they feel doing so is futile or harmful to their clients' cases (Ottone & Scott-Hayward 2018, Siegler & Zunkel 2020).

Moreover, many defendants go into their bail hearings without legal representation—surprising given the constitutional right to defense in criminal cases (Colbert 1998, Const. Proj. Natl. Right Couns. Comm. 2015, Worden et al. 2020). The Sixth Amendment right to counsel attaches at the initial hearing, when the defendant is informed of the charges against them. Commonly, bail determinations are also made in these same hearings. It is also constitutionally unclear whether the technical attachment entitles a defendant to assistance of counsel in bail proceedings (*Rothgery v. Gillespie County* 2008, Scott-Hayward & Fradella 2019). Only 14 states guarantee such assistance to defendants (Const. Proj. Natl. Right Couns. Comm. 2015). The resulting lack of legal representation further advantages prosecutors in the bail process and, as several studies indicate, disadvantages defendants. Those who receive counsel tend to have better legal outcomes than those who do not, and they are more likely to be released unconditionally and less likely to have a high bail amount set (Colbert et al. 2002; Worden et al. 2018, 2020).

LOCKING UP, SUPERVISING, AND CORRECTING THE POOR

As the shape and culture of the field of bail have changed since the 1980s, pretrial detention trends reveal that bail practices have become even more punitive. "From 1996 to 2014," Thompson (2016, pp. 491–92) explains, "the number of unconvicted people in U.S. jails has increased by fifty-nine percent, accounting for ninety-five percent of the total increase in jail populations." As of 2020, roughly 467,000 unconvicted people (74% of the total local jail population of 631,000) are being held in jails (Sawyer & Wagner 2020). At the federal level, pretrial detention rose from approximately 26% of defendants prior to the passage of the 1984 Bail Reform Act (Wiseman 2009, p. 156) to 59% (excluding immigration cases) in 2017 (Austin 2017, p. 60).

Bail is the main reason these defendants are locked up. Either they cannot afford their bail amounts or bail bond companies refuse to bail them out. The former has a great deal to do with the rise in pretrial detention. From 1990 to 2009, judges in large US counties became more inclined to assign monetary bail to felony defendants (rising from 53% to 72% of all cases), and although "real median bail amounts stayed relatively constant at around $10,000," the "average bail assignment increased by 46% to $61,000, indicating that an upper tail of defendants now face bail payments in the hundreds of thousands of dollars" (Counc. Econ. Advis. 2015, p. 6). Judges rarely consider defendants' ability to pay when setting bail, but today "the median bail amount in this country represents eight months of income for the typical detained defendant" (Prison Policy Initiat. 2016, p. 2)—an amount entirely out of reach for so many (Ottone & Scott-Hayward 2018, Thompson 2016). In the latter case, when bail companies refuse to bail someone out, it is generally because the

defendant either lacks social contacts willing to cosign on the full amount of the bond or is unable to come up with the bail bond agencies' fees (often 10% of the bond). And ironically, sometimes when bail amounts are set low (but still out of reach for the defendant), bail agents may decline to take on the client because the deposit is too low to make the effort worthwhile for the bonding company (Feeley 1979, Page & Soss 2021).

The intensification of social control in the pretrial process has not been limited to detention. Defendants who achieve pretrial release are often subject to supervision in the community, often by pretrial services agencies (PSAs). PSAs emerged in the 1960s as part of the reform movement that sought alternatives to financial bail, already understood as harmful to poor defendants. These new agencies helped courts evaluate defendants for release and, eventually, gained responsibility for monitoring people released on nonfinancial conditions (Scott-Hayward & Fradella 2019).

As jail overcrowding, overflowing court dockets, and strained budgets became perpetual problems in the 1990s, PSAs seized new opportunities to expand their authority and enhance their position in the field of bail (Castellano 2011, Pretr. Justice Inst. 2009). For example, Castellano's (2011) ethnographic research on four nonprofit organizations in a Northern California county shows that these organizations gained status and authority by addressing court actors' fears around criminal and political risk. The caseworkers in her study crafted individual assessment narratives about defendants that convinced bail commissioners and judges that neither financial bail nor pretrial detention was necessary to secure the accused's appearance in court or protect the community—and that the PSA caseworkers were committed to monitoring their clients in the community. Therefore, judicial authorities could transfer their risk management obligations to the pretrial release organizations. Notably, however, Castellano's finding that bail commissioners rely heavily on the recommendations of PSA caseworkers is challenged by other research finding that judges often ignore PSA recommendations. For example, in Harris County, Texas, "hearing officers rejected the recommendations of pretrial services to release defendants on personal bond more than two-thirds of the time" (Scott-Hayward & Fradella 2019, p. 54).

PSAs like those Castellano studied, which have a social work orientation and social justice aspirations, limit pretrial punishment in the form of imprisonment and payments to bail bond companies. They also connect defendants with social services, offer emotional support, and help clients navigate the often-bewildering criminal legal bureaucracy. At another level, however, PSAs reinforce the coercive logic of bail. Castellano (2011, p. 141) warns that her analysis

> raises the spectre of coercive compliance when justice is outsourced to nonprofit agencies. Once released to the supervision of pretrial release programs, defendants are subjected to forms of discipline that may have little to do with the adjudication of their criminal case. In becoming a client, the defendant is subjected to the supervisorial mandates of private agencies. . .Outsourcing justice casts the net of social control over larger numbers of low level offenders with 'smaller holes' which makes it more difficult for individuals to disentangle themselves from the justice system.

Put another way, PSAs offer expansive possibilities for using the pretrial process to discipline poor, nonconvicted persons—that is, to work in ways that aim to produce upright, sober, hardworking citizens. In this regard, bail functions as poverty governance, i.e., "the supervision, regulation, and integration of impoverished populations into civil society and the market" (Stuart 2016, p. 7; Soss et al. 2011).

PSAs come in a variety of forms, and most are not nonprofits; often, they are governmental agencies, housed in probation departments (Calif. Saf. Justice 2015, Pretr. Justice Inst. 2009). Since the 1990s, the number of people released unconditionally on their own recognizance has dropped steadily (Cohen & Reaves 2007); as more jurisdictions attempt to limit cash bail and reduce their jail populations, the potential for restrictive control to be displaced from jails to the community is

great. Thus, PSAs are now responsible in many areas for ensuring compliance with court-ordered pretrial conditions, ranging from curfews, stay-away orders, and check-ins with case managers to mandatory drug testing, counseling, and participation in treatment, educational, or job-training programs. In enforcing these conditions, PSAs extend probation (either literally or effectively) into the pretrial process. And although the experiences of people under pretrial supervision are understudied, research has found, for instance, that electronic monitoring interferes with defendants' ability to maintain employment and stable housing (Eife 2021, Kirk 2020). It is well established that current bail practices contribute to mass incarceration, both directly—via pretrial detention—and indirectly—by facilitating plea bargains that lead to prison sentences (Wiseman 2018); however, there is less recognition or understanding of the role of pretrial monitoring in shaping mass supervision in the United States (see McNeill 2018, Phelps 2017).

GENERATING REVENUE AT THE INTERSECTION OF STATE AND MARKET

The field of bail, we have argued, creates extensive opportunities for containing, controlling, and changing poor defendants (whether these aims are realized is an open question). It also offers ample possibilities for charging them: Bail is about generating revenue. Since the early 1900s, bail bond companies and the insurance companies that back them have been the primary moneymakers in this arena. These businesses earn profits by charging nonrefundable premiums (typically 10% of the bail) to get defendants out of jail (the United States and the Philippines are the only countries that allow this commercial arrangement). Yet as early as 1979, Feeley (1979, pp. 96–97) wrote that "there has been virtually no scholarly interest in the bail bondsman. . .this neglect and perfunctory dismissal cannot be attributed to the bondsman's lack of importance." Four decades later, these words still ring true. This lack of attention—especially from sociolegal scholars—may derive from the common misperception that commercial bail is a private industry set apart from the normal workings of the state. In fact, bail should be understood as one among many forms of public–private partnerships that define American governance (Hacker 2002, Morgan & Campbell 2011).

Anticipating and countering the private versus public confusion surrounding bail, Dill (1975, p. 644) asserted that "the state has created a business operation within the criminal courts." He meant this quite literally. In 1912, the US Supreme Court ruled in *Leary v. The United States* (1912) that bail companies could create legally enforceable contracts with bond-seeking guarantors. This decision cleared the path for the development of the bail bond market. In subsequent years, the government has implemented laws that have proven exceedingly advantageous for the bail industry (Feeley 1979, p. 97). As Helland & Tabarrok (2004, p. 97) explain, the state grants bail bond companies and their agents remarkable powers, including "the right to break into a defendant's home without a warrant, make arrests using all necessary force including deadly force if needed, temporarily imprison defendants, and pursue and return a defendant across state lines without the necessity of entering into an extradition process."

Consumer demand for bail bonds is, like the industry itself, constructed through a process that begins with the state (Page & Soss 2021). When judicial authorities order financial bail in amounts that exceed defendants' ability to pay, they effectively produce customers for bail bond companies. As judges ramped up both the use of financial bail and the amounts charged, defendants have become more reliant on bail bond companies: "Between 1990 and 1994, about a quarter of defendants used commercial sureties; by 2004, more than 40% of defendants did, and by 2009, roughly 49% of releases from jail were a result of the posting of commercial bonds" (Scott-Hayward & Fradella 2019, p. 57). This effect is highlighted when jurisdictions stop relying on financial bail, making clear the role of public policy and legal practice in creating this market demand: When,

for instance, Washington, DC, removed cash bail as an option in most cases, demand for bail bond services dried up.

The bail bond industry is not simply a product of state law and practice; it is also embedded within government institutions and practices. Dill (1975) and Feeley (1979) each show that bail bond agents are supportive members of the courtroom workgroup who help legal professionals meet official and unofficial objectives. In doing so, they "help create norms, define operations, and structure alternatives in the court system" (Feeley 1979, p. 96). At the most basic level, bail agents allow judges to set financial bail that defendants would be unable to make without the help of bail agents while "preventing intolerable pressures on detention facilities" (Dill 1975, p. 665). Moreover, courts may rely on bail companies to use their "legal power to interstate extradition in order to help officials avoid the problems and expense of securing the return for prosecution a fugitive defendant who has been apprehended in another state" (Dill 1975, p. 669; Goldfarb 1965, pp. 110–11). Bail agents also help keep the assembly line of justice moving by guiding defendants—especially those who do not have private attorneys—through the legal process (Dill 1975, Feeley 1979, Joiner 1999, Page 2017a, Toberg 1983), motivated, Dill (1975, p. 670) reasons, because "their earnings depend directly on the number of cases they handle."

Bail bond companies benefit from their cooperative relations with dominant actors in the field, especially judges, who set bail and help limit bond companies' financial liability. In theory, commercial bail is a risky business; when clients fail to appear for court, judges can order the bail companies to pay forfeitures (the full amount of the bond) to the court. That risk is, to supporters of commercial bail, the linchpin of the system, an ostensible strong motivation for bail companies to keep tabs on clients and quickly go after any who miss court (e.g., Joiner 1999, p. 1424). In practice, however, commercial bail is not nearly as risky as industry spokespersons and some scholars suggest. In 1975, Dill (1975, p. 665) wrote that "virtually every study of bail administration ever conducted has found that a large proportion of forfeitures are set aside by judges"(see also Goldfarb 1965, Feeley 1979). Scott-Hayward & Fradella (2019, p. 57; see also Justice Policy Inst. 2012) recently reached a similar conclusion:

> Bail bond forfeitures are exceedingly rare; some states report that commercial bail companies actually pay only 1.7 to 12% of forfeitures they owe. But even in the relatively uncommon circumstances when forfeitures occur, bail agents rarely pay the full amount when a defendant fails to appear. Some courts are willing to accept dramatically lower amounts in satisfaction of a bail bond.

Instead of forfeiting bonds entirely, courts may charge companies a delinquency fee (e.g., 10% of the bond) (Feeley 1979, Page & Soss 2021). There is little research on why courts are lenient with forfeitures, but scholars suggest two main reasons: First, by reducing bail companies' financial liability, courts ensure that the companies will continue to bail out a sizable portion of defendants, not just those with big bails (and therefore big premiums) who pose a minimal economic risk (Dill 1975, Feeley 1979). Second, setting aside forfeitures helps courts avoid resource-draining legal challenges from bail bond companies (Financ. Justice Proj. 2017, Page & Soss 2021).

Because the risk of forfeitures is relatively small, bail companies do not need to spend much time or many resources monitoring clients. They typically remind clients of court dates and sometimes ask clients to check in periodically, but unless clients miss payments or court appearances, bail agents can essentially forget about them, focusing instead on landing the next bond. Favorable treatment by the court also means that bail companies can wait days, weeks, or even months before expending resources to track down clients who fail to appear—in that gap, there is a decent chance that defendants will turn themselves in or get picked up by the police. Courts do not sanction bail companies should their clients commit crimes while on community release, and so these businesses

need not concern themselves with public safety (Dill 1975, Page 2017b). In fact, if a client commits a crime and gets arrested, the bail company benefits: Defendants who are locked up do not miss court, ensuring that companies will not have to pay delinquency fees or forfeitures (Page 2017b).

The normal operations of bail create possibilities for making large profits, especially for the insurance corporations that underwrite the bonds that agents post (Color Change & ACLU 2017, Dill 1975, Page et al. 2019). With backing from corporate sureties, the insurance companies that receive a cut of the bond premiums, bail companies can write bonds well in excess of their cash reserves. Because courts rarely forfeit bonds, the sureties rarely have to pay out for losses, as Bauer (2014) found when he reviewed the financial records of 32 surety companies: "In 2012, they cumulatively paid less than 1% in bail losses." The structure of the bail industry, then, ensures sizable profits for the small number of insurance corporations that "cover the vast majority of the estimated $14 billion in bond posted by the for-profit bail industry each year" (Color Change & ACLU 2017, p. 22). Estimates put bail insurance profits between $1.4 and $2.4 billion a year (James 2019).

Even as the sureties and some bail bond companies enjoy consistently large profits, bail agents, who typically work on commission, have to hustle to make a decent living. To get a leg up on competitors, agents cultivate relationships with actors in the field who can provide a steady stream of referrals. Private defense attorneys are particularly prized partners because their clients typically have money; in return for referrals, bail agents recruit potential clients for the attorneys, who also labor in a competitive field (Dill 1975, Page & Soss 2021). Feeley (1979, p. 106) elaborates on bail agents' motivations for nurturing relationships with legal professionals: "Bondsmen find it advantageous to remain on the good side of the police who can direct business their way, and to ingratiate themselves with judges and prosecutors who can pass cases, grant continuances, stay bond forfeitures, and facilitate reductions through compromises." Even jailed defendants can funnel business to enterprising bail agents who recruit them as "freelance subcontractors acting at their behest" and offer "cash and other incentives to those who steer new clients to them" (State N. J. Comm. Investig. 2014, p. 2; see also Dill 1975, pp. 647–48; Page & Soss 2021).

Along with building referral networks, bail agents engage in direct sales. For example, they hang around courthouses and attend bail hearings, hoping to connect with the people who are there to support defendants. They scour jail rosters (many of which are online) and cold-call family members (Page et al. 2019). As these examples indicate, bail agents' sales strategies focus primarily on defendants' relations, not the people in jail. Those on the outside—friends, family members, coworkers, etc.—are most likely to come up with the premium and serve as a defendant's cosigners. Typically, to secure their investments, companies require at least one cosigner for every bond (Page 2017a). Even when defendants call bail agents from jail, they simply supply the agent with contact information for potential cosigners. In this regard, the defendant "functions as an entry point (even a lure)" for bail bond sales (Page et al. 2019, p. 153).

There is limited research on cosigners' or bail agents' efforts to secure them. Because bail bond companies are not covered by public record laws, they do not have to reveal information about their business practices, including who pays their premiums and cosigns their contracts. However, two studies indicate that women assume the bulk of cosigning duties. Phillips (2010, p. 22) found that in New York City, 83% of cosigners were family members, and mothers, followed by sisters, "cosigned for bonds far more than anyone else." Page's ethnographic research of commercial bail in a large urban county also finds that women, primarily low-income women of color, disproportionately take on the burden of cosigning. In a recent article, Page and coauthors (2019, p. 156) argue that the "gendered basis of caring relations in American society" explains why women feel responsible for bailing out defendants—a sense that is amplified when bail companies focus their sales strategies on female family members.

Based on their analysis of the bail bond process, Page and coauthors (2019, p. 168) argue that commercial bail operations "prey on subjugated communities, leveraging the needs and vulnerabilities created by pretrial processes to turn poor people's resources into corporate and governmental revenues." And as we have seen, agents employ aggressive and, in some cases, illegal strategies to mine resources from defendants and their families. Given this reality, scholars have sought to understand how bail agents come to view their work as justifiable and neutralize the stigma associated with the occupation, allowing them to continue providing the frontline labor that forms the basis for industry profits. This line of research focuses primarily on a discourse centered around service (Davis 1984, Dill 1975, Page 2017a), in which agents see themselves as professional service providers who aid defendants and defendants' loved ones. This belief holds weight with agents because it is based on their daily work experience. Government policy and practice create service needs, and bail bond agents address those needs. For example, when judges set unaffordable bail, defendants rely on—and often appreciate—bail bond services. And because the legal process is typically cold, confusing, and alienating, defendants and their families (especially those without private attorneys) need help navigating it—help that agents are typically happy to provide as part of their general sales strategy.

Bail agents' sense of legitimacy stems in part from their perceptions of the state's revenue-generating activities. Indeed, the government increasingly operates like a business that makes defendants pay for all sorts of goods and services. Courts today charge defendants for everything from using a public defender to wearing an electronic monitoring device (Harris 2016, Kofman 2019). Jails charge pay-to-stay fees (i.e., rent) and contract with private companies that charge exorbitant rates for phone calls and goods from the commissary (with a portion of revenues often returned to the companies' public partners) (Kukorowski et al. 2013, Raher 2018). Through these and other revenue-generating practices, the state acts like a bail bond company. Therefore, bail agents feel unjustly singled-out when critics argue that their profession is uniquely predatory. Ironically, some agents think they provide an additional service by pulling defendants out of court- and jail-centered predatory arrangements (Page & Soss 2021). What agents perhaps do not appreciate enough is that the expansion of state-based predation in the pretrial process creates even more motivation for defendants to get out of jail and avoid expensive release conditions (e.g., electronic monitoring)—which, for many defendants, means purchasing the services of a bail bond company.

A PATTERN OF INEQUALITY

Although the social scientific literature on commercial bail is sparse, research on the consequences of financial bail and pretrial detention is expansive. Stretching from the 1920s to the present, a long line of scholars shows that the field of bail produces patterned and predictable harms that disproportionally fall on the poor and people of color. Because so many defendants cannot afford the bail set in their cases, they are deprived of their liberty and subjected to harsh conditions of confinement. Jails are typically crowded, with poor healthcare, and the suicide rate in jails is three times the rate in prison (Noonan 2016, Vera Inst. Justice 2018).

Along with subjecting individuals to harmful jail conditions, pretrial detention reinforces social inequalities. As the Supreme Court has acknowledged, "pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships" (*Gerstein v. Pugh* 1975). In addition to job loss, people can lose their housing or custody of their children (Heaton et al. 2017, p. 711). In a 2015 study, the Vera Institute of Justice concluded that "even a brief stay in jail can be destructive to individuals, their families, and entire communities" (Subramanian et al. 2015, p. 2). Dobbie and colleagues (2018) found that people incarcerated pending trial experience worse employment outcomes—reduced employment, wages, and annual earnings—than released

defendants. Pretrial detention is also linked to future criminal justice involvement, even for low-risk defendants (Dobbie et al. 2018, Gupta et al. 2016a, Heaton et al. 2017, Lowenkamp et al. 2013).

There are also negative, cascading effects of pretrial detention that affect later case outcomes. For example, studies have found that incarcerated defendants are more likely to plead guilty (and do so earlier) than similarly situated defendants who are released pending trial. They are also more likely to be sentenced to prison and to receive longer sentences than comparable defendants who are not locked up pretrial (Dobbie et al. 2018, Heaton et al. 2017, Kellough & Wortley 2002, Phillips 2012, Stevenson 2018). The reasons for these worse outcomes are not as well studied, but scholars suggest that coerced plea deals, the difficulty of building successful cases from behind bars, and challenges that detained defendants have in providing mitigating evidence are contributing factors (Chevrier 2021, Euvrard & LeClerc 2017, Heaton et al. 2017, Lerman et al. 2021).

Because the combination of high bail and low income drives pretrial detention, scholars argue pretrial practices effectively punish poor people (Scott-Hayward & Fradella 2019). And as with the rest of the criminal legal system, people of color are disproportionately punished. Although national data on the racial and ethnic breakdown of pretrial detainees are unavailable, people of color are overrepresented in the overall jail population (Minton & Zeng 2015). This is partly a result of racialized policing practices, which bring disproportionate numbers of Black and Latino/a defendants into the criminal legal system (Alexander 2010, Mayson 2019). It is also the product of the intersection of race and poverty in the United States; defendants of color are less likely to be able to pay bail than White defendants (Prison Policy Initiat. 2016).

Disparate treatment in pretrial decision-making also drives disparities in pretrial incarceration: Black and Latino/a defendants are less likely to be released and more likely to have financial bail set than White defendants (Demuth & Steffensmeier 2004, Sacks et al. 2015). Schlesinger found that racial and ethnic disparities were greater in cases involving violence and drugs. Judges, she argues (Schlesinger 2005, pp. 187–88),

> use racialized attributions to fill in the knowledge gaps created by limited information on cases and defendants. Through this process, racial and ethnic stereotypes become permanent 'knowledge' that direct criminal justice decisions. However, stereotypes are not always already salient. Rather they need to be made salient by other criminal justice features. When criminal justice features—such as the type of crime a defendant is charged with—increase the salience of racialized attributions, racial and ethnic disparities in punishment outcomes are reproduced and magnified.

In a quasi-experimental study of bail decisions in Miami and Philadelphia, Arnold and colleagues (2018, p. 1929) similarly conclude that "bail judges rely on inaccurate stereotypes that exaggerate the relative danger of releasing Black defendants versus white defendants."

Compared to the literature on the consequences of pretrial detention, the scholarship on harms that come with using the services of bail bond companies to get out of jail is embryonic. However, there is growing recognition among scholars (and policymakers) that paying hundreds or thousands of dollars for a bail bond is a major sacrifice for most defendants and their families. Those who pay bail premiums (typically family members, often women) may have to forgo necessities such as rent, food, and medicine (Color Change & ACLU 2017). Unable to afford the full premium up-front, cosigners often pay in installments, according to terms set out in a payment plan, and may have to pay interest or additional fees (e.g., costs for bounty hunter services should the defendant skip court), landing cosigners in debt traps (Page & Soss 2021). Cosigning is often stressful and can lead to harassment from bail companies and their representatives, who pressure cosigners to locate defendants who miss court or payments and threaten to send their cases to debt collection agencies if they fall behind on their bills (Page et al. 2019).

Payments to bail bond companies also drain resources from low-income communities of color. A study of commercial bail in Maryland reports (Gupta et al. 2016b, p. 4) that bail companies

> extract tens of millions of dollars from Maryland's poorest zip codes, contributing to the perpetuation of poverty. The money bail system has a disproportionate impact on racial minorities: over five years, black defendants were charged premiums of at least $181 million, while defendants of all other races combined were charged $75 million.

A 2017 study of New Orleans found a similar pattern: "The burden of paying bail, fines and fees is borne primarily by black residents, most of whom are struggling economically. . .Black residents of New Orleans paid $5.4 million, or 84%, of the $6.4 million dollars in bond premiums and associated government fees in 2015" (Laisne et al. 2017, p. 18). These studies indicate the value of—and need for additional—research on the community-level consequences of cash bail and their implications for the enduring US racial wealth gap (Oliver & Shapiro 1995).

AN ONGOING STRUGGLE

The current bail reform movement is a collective, although not necessarily coordinated, effort to address pretrial inequalities and harms. This struggle, which has recently drawn public attention and made significant gains, is not new. Actors within the field of bail have fought to limit cash bail and pretrial detention since at least the 1960s. Even during the height of the tough-on-crime era in the 1980s and 1990s, these actors continued to resist the spread of restrictive social control and financial extraction. They honed legal strategies, lobbied lawmakers, and, in some places, achieved important policy victories (such as the near end of cash bail in Washington, DC, in 1992). Key to these reform efforts was a shared understanding that a core assumption in the field of bail—that defendants need a financial incentive to show up for court and avoid criminal activity—is incorrect. Despite the ubiquity of money bail, there is no evidence that it keeps the public safer and only mixed evidence that it impacts appearance rates (Liu et al. 2018). Research shows that far more people could be released from jail unconditionally without increasing crime (Baradaran & McIntyre 2012) and already-high appearance rates can be increased through low-cost court notification programs like automated text message reminders (Ferri 2020, Fishbane et al. 2020).

In recent years, the struggle for change has gained steam, involving a wider range of actors (including some political conservatives) and innovating and updating movement strategies. Today, we see this reform movement as consisting of four main strategies that, together, aim to transform the field of bail. The first entails creating new positions in the field. Community bail funds are at the forefront of this strategy. These nonprofits raise money to stock revolving funds, which they use to help chronically underserved defendants who linger in jail because they are poor and lack social capital (Simonson 2017; on the history of bail funds, see Steinberg et al. 2018). They also help defendants show up for court by providing reminders, rides, and, in some cases, childcare. Some go further, Simonson (2017, p. 603) explains, by offering "a wide range of social and charitable services, such as drug treatment and job referrals to individuals with pending cases."

Bail funds these days are expressly political, framing their mission within the larger project of ending mass incarceration. Through their daily work and participation in mass bailouts (e.g., Mama's Day Bail Out on Mother's Day), they raise public awareness about the harms of cash bail for defendants and their families. A community model of pretrial release, they insist, is more effective and just than one based on money and restrictive social control. Some bail funds aim to politicize and empower the people they bail out of jail, specifically seeking to involve "these

individuals in local social movements aimed at changing criminal justice practices, sometimes even conditioning money bail on fidelity to a movement" (Simonson 2017, p. 603).

Along a second path, reform actors seek more powerful positions in the field as a way to alter pretrial practices and norms. We see this with progressive prosecutors—lawyers who become district attorneys to enact reforms that reduce mass incarceration and promote racial and economic justice. Opposing money bail, Davis (2019, p. 22) argues, is a defining characteristic of progressive prosecutors, some of whom have taken bold actions. In Philadelphia, for example, DA Larry Krasner's office "no longer seeks cash bail for defendants charged with twenty-five different crimes, including prostitution, retail theft, and trespassing" (Davis 2019, p. 12). Ouss & Stevenson (2020, p. 2) note that Krasner's policy "applied to nearly 2/3 of all cases filed in the city of Philadelphia, including both misdemeanors and nonviolent felonies." In February 2020, San Francisco DA Chesa Boudin went even further, issuing a formal policy that "forbids prosecutors from requesting money bail under any circumstances" (Doyle 2020).

The third strategy of struggle uses laws already on the books (i.e., the official rules of the game) to undermine the status quo. In 1965, Foote (1965, p. 962) predicted that "the next major clash between our norms of actual administration and the constitutional theories expounded in recent years by the Supreme Court will revolve around the discrimination against the poor which is inherent in the bail system." His prediction was not borne out, at least not right away: In the past decade, however, nonprofit legal outfits (e.g., Civil Rights Corps) have forced courts to reevaluate the constitutionality of cash bail (Funk 2019). Some scholars turn to the Eighth Amendment's Excessive Bail clause to argue against money bail (Howe 2015), but litigation increasingly relies on the Fourteenth Amendment and its due process and equal protection clauses, with scholars and advocates highlighting discrimination based on wealth and class as well as a failure to consider defendants' individual circumstances (Funk 2019, Scott-Hayward & Ottone 2018). Indeed, a Supreme Court of California decision in 2021 largely accepted these arguments and required that courts imposing money bail must consider a defendant's ability to pay (*In re Kenneth Humphrey* 2021). Lawyers have also turned to consumer protection and RICO laws to challenge predatory practices that bail bond and electronic-monitoring companies use to extract money from defendants and their families (Kornya et al. 2019, Dinzeo 2021, *Edwards v. Leaders in Community Alternatives* 2019).

A fourth strategy aims to change the official rules of the game. A handful of states—including, to date, Alaska, Illinois, New Mexico, New Jersey, and New York—have passed legislation that reduces their reliance on financial bail, generally in favor of mandated risk assessments and the use of PSAs for the evaluation and pretrial monitoring of defendants. In other places, the judiciary has adopted rules that limit the use of cash bail. Maryland's highest court, for instance, amended its rules in 2017 to promote unconditional release and unsecured bonds (Blumauer et al. 2018). These efforts limit the use of cash bail without necessarily reducing the social control that saturates the pretrial process. In fact, critics of financial bail actually opposed legislation to transform California's bail system because they feared that the law would lead to even more social control of poor people of color. For example, the legislation included a presumption against release for large numbers of people, including those deemed low-risk, and likely would have resulted in a dramatic expansion in the supervision of pretrial defendants by probation officers (Scher 2020).

Reformers have responded more favorably to policy change in places such as New Jersey, where the state sought to limit cash bail and the scope of social control (Pretr. Justice Inst. 2017). After implementing its reforms in 2017, New Jersey's pretrial incarceration plummeted: The legislation drastically decreased the number of people brought to jail (via citation in lieu of arrests), mandated release on recognizance for low-risk defendants, and required adversarial detention hearings that make it burdensome for prosecutors and judges to lock up defendants (Grant 2019). Notably, however, although New Jersey has reduced pretrial detention, it has continued to rely heavily

on pretrial monitoring. In 2019, just 9.1% of New Jersey's defendants were released on their own recognizance, but 72.7% were released to pretrial monitoring (Grant 2020, p. 26). Moreover, racial disparities persist in New Jersey's pretrial detention (Grant 2019). It is unclear whether the state's use of a race-neutral risk assessment tool contributes to these disparities, but it is evident that use of the tool has not reduced them.[3]

The limited scope of bail reform in New Jersey and elsewhere is due in part to fierce opposition from several sources. Since the early 1990s, the bail bond lobby has been at the head of this struggle. Led by the American Bail Coalition, an influential advocacy group funded mainly by big insurance companies, the lobby engages in pricey public relations campaigns depicting commercial bail as an essential government partner that ensures defendants show up for court at no cost to taxpayers. It also uses scare tactics to sway public and policymaker opinions about the alleged dangers of reform (and dangerousness of defendants), fights lawsuits that target financial bail, and employs hardball political tactics to limit release on recognizance and stop the spread of PSAs, both of which reduce governments' reliance on commercial bail for managing pretrial defendants (Billings 2016; Gottschalk 2016, pp. 76–77; Page & Soss 2021). Between 2010 and 2016, the bail lobby reportedly contributed more than $1.7 million to affect state-level bail policies (Color Change & ACLU 2017, p. 41). Working with the American Legislative Exchange Commission (ALEC), the lobby has successfully advanced legislation that promotes industry profits by, for example, making it even more difficult for courts to collect on forfeitures (Page & Soss 2021).

Representatives of the bail lobby work alongside and sometimes in coalition with law enforcement and crime-victim organizations. Drawing on tough-on-crime discourses, police unions, district attorney associations, and victim groups paint bail reform as antivictim and procriminal, and they draw public and media attention to crimes committed by defendants on pretrial release (Page et al. 2020). Through this political–cultural work, they reinforce assumptions about defendants' guilt and dangerousness and the need for restrictive social control. The groups also try to electorally defeat lawmakers and legal professionals (including prosecutors) who back reform, reinforcing the sense of political risk that pervades the field and makes actors within it skittish about change.

Together, these actors have spearheaded efforts to roll back reforms, as seen recently in California, where voters approved a bail bond industry–sponsored ballot initiative that stopped the implementation of legislation limiting financial bail, and Utah, where legislators repealed bail reform legislation that they had passed just a year earlier. This loose coalition has also worked with legislators in several states—including Alaska, New Jersey, and New York—to water down reforms. For example, after vocal criticisms from antireform prosecutors and their allies, New York rolled back portions of its landmark legislation after only three months; in April 2020, it removed several of the new limitations on the use of cash bail and pretrial detention (Lartey 2020, Rempel & Rodriguez 2020).

System actors are able to leverage their positions in the field to subvert the intention of policy change. In New York, where bail reform legislation requires judges to offer either unsecured bonds or partially secured bonds (PSBs) (which allow defendants to post a refundable 10% deposit) in lieu of cash bail, research shows few judges have actually offered unsecured bonds and many are

[3]Scholars argue that risk assessment tools—which typically give significant weight to prior charges and convictions, and associate indicators of poverty with risk—amplify existing racial, ethnic, and class disparities in pretrial decision-making (Hannah-Moffat 2019, Harcourt 2015, Mayson 2019). There is evidence that the tools overestimate risk (Barabas et al. 2019, Copp & Casey 2021), particularly for non-White defendants (DeMichele et al. 2020).

setting PSBs at higher amounts than traditional bail. As Mehta (2020) explains, "By setting PSBs at rates unaffordable for many defendants, criminal justice advocates and public defenders say, judges, who have complete discretion, have in effect nullified a program instituted by the legislature to free more poor people from jail." As research on street-level bureaucracy shows, buy-in from frontline workers is critical to successful implementation of public policy (Lipsky 1980). Because judges occupy a dominant position in the field of bail, their cooperation is especially important. This understanding is spurring efforts to recruit and elect progressive judges committed to implementing bail reform and challenging assumptions that promote restrictive social control and financial extraction in the pretrial process (Ewing 2019, Exstrum 2019).

REIMAGINING PRETRIAL JUSTICE

Bail used to be an afterthought in scholarship on law, crime, and punishment. But there is now a growing community of scholars generating important empirical findings, theoretical insights, and normative positions about bail and pretrial justice in the United States. Little of what we know about these issues, however, comes from first-hand accounts from the people most affected by bail policies and practices. As such, we have limited understandings of how defendants and their families and communities experience the pretrial process—from bail hearings and interactions with bail bond companies to pretrial detention and community supervision. By investigating these experiences and people's understandings of them, we could better comprehend how bail affects people psychologically, emotionally, socially, and materially. Moreover, we could connect the scholarship on bail to broader discussions about criminal justice entanglement and citizenship, which explore how policing, incarceration, and supervision limit formal rights and shape people's conceptions of their place in society (Bell 2017, Lerman & Weaver 2014, Miller & Stuart 2017).

Turning attention to criminalized people and communities would further show that they are not just subjects of pretrial social control and financial extraction. They are involved in struggles to transform the system. They are the leaders of bail funds, and they are court watchers who hold legal professionals accountable by reporting on the largely hidden process of pretrial decision-making (Mettler 2021). They participate in local and statewide efforts to transform bail policy, pushing established reformers to question their assumptions and see the unintended consequences of policy proposals. In Illinois, the "massive grassroots mobilization of more than 100 reform organizations" led to arguably the most progressive bail reform in the country (Ali 2021).

And they are involved in organizations, such as Silicon Valley De-Bug, that are developing new models of pretrial release that, in the words of De-Bug cofounder Raj Jayadev (2019), "refuses to accept the binary of money bail or system control." Working with defendants' families and friends, De-Bug compiles information about the accused, which public defenders can then use in bail hearings to contextualize risk assessments and present individualized, holistic descriptions of the defendant. The group also arranges community supports that address defendants' needs, easing judges' concerns that the accused will skip court or commit crime if released (Jayadev 2019). Moreover, members of the group "support one another when loved ones are out on bail by offering transportation to court, employment opportunities, shelter, and childcare. These mutual support practices supplant the state's various pretrial control techniques (e.g., probation check-ins, drug testing, house arrest, or incarceration) with pretrial care provision" (Clair & Woog 2022, p. 27). Local organizers in at least sixteen states have implemented variations of De-Bug's model of participatory defense (Particip. Def. Netw. 2021).

By attending to efforts already centering the experiences and agency of criminalized people and communities, scholars can open up new avenues for research and ask important questions that have the potential to challenge common understandings about bail and pretrial justice. How,

for example, do organizations like De-Bug and people in criminalized communities conceptualize pretrial justice, public safety, and community well-being? How do they strive to implement their vision of justice? How do they build and exercise power through relationships with other movement organizations, system actors (e.g., public defenders), and public interest law outfits (e.g., Civil Rights Corps)? In what ways are the Black Lives Matter movement and the larger struggle for racial justice inspiring new forms of pretrial activism and, possibly, forcing politicians and reformers to listen to criminalized people? Has the coronavirus pandemic (and the pressing need to reduce jail populations) created opportunities for grassroots organizations to broaden policymakers' ideas about reform? By pursuing such questions, researchers can develop a more accurate and complete understanding of the struggles to transform the field of bail. At the same time, scholars can amplify movements that are little known outside of criminalized communities and potentially identify organizing strategies, political conditions, and institutional arrangements that, together, produce the conditions that make possible a fuller reimagining of pretrial justice.

DISCLOSURE STATEMENT

The authors are not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

ACKNOWLEDGEMENTS

We are grateful to Joe Soss and Forrest Stuart for providing helpful feedback throughout the thinking and writing process and to Letta Page for her editorial wizardry. We appreciate the insightful comments from an anonymous reviewer, and we thank David Garland and Absolom Hagg for their guidance and patience.

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of Criminology

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