

“I’m Already Guilty”: Perceptions of Reform in Cook County Central Bond Court

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Abstract

In this thesis, I analyze the implementation of General Order 18.8A, which mandated that pretrial judges take a defendant's ability to pay into consideration when setting bond amounts in Cook County Central Bond Court. I draw upon in-depth interviews with defendants and ethnographic observation of Central Bond Court to examine the interactions between court officials and defendants and the ways in which racial and socioeconomic inequality is reproduced in the courtroom. I complement this research with quantitative data collected by the Circuit Court of Cook County on pretrial incarceration rates and bond types. Based on these different forms of data and analysis, I answer two questions. First, I ask how court officials implement General Order 18.8A and interact with defendants and members of the public in Cook County Central Bond Court. Second, I ask to what degree General Order 18.8A encompasses defendants' perceptions of what justice and reform should look like within the pretrial system. In the final sections of this thesis, I provide specific policy recommendations to improve the proceedings and procedures in Cook County Central Bond Court. Furthermore, I argue that policymakers and members of the public must reimagine societal conceptions of guilt, justice, and reform before substantial change can be made to the system of pretrial detention and to the criminal justice system more generally.

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Introduction and Background

When Cook County Chief Judge Timothy Evans issued General Order 18.8A on July 17, 2017, he mandated that judges should order non-monetary conditions of pretrial release, and if monetary bond is set, that the court should make an ability-to-pay determination for defendants before setting the bond amount.¹ In the preamble of the order, Chief Judge Evans stated that General Order 18.8A seeks to “ensure fairness and the elimination of unjustifiable delay in the administration of justice.”² If strictly adhered to, General Order 18.8A would eliminate pre-trial incarceration of “bailable” defendants who would otherwise be unable to pay their bond. The implementation of General Order 18.8A, however, rests in the hands of court officials, such as judges, pretrial service officers and public defenders, who wield significant discretion and who, according to scholars, carry value-based judgments about the defendants they interact with.³

To “assist the court in establishing reasonable bail” for defendants, the Chief Judge ordered the use of a pretrial risk-assessment tool.⁴ This tool, also called the Pretrial Safety Assessment (PSA), is intended to assess the likelihood that the defendant would recommit a violent crime or pose a present “threat to the physical safety of any person” if they were to be released and assesses their likelihood to reappear in court for future proceedings.⁵ The PSA tool provides a number between 1 and 6 for two categories: “criminal background” and “failure to

¹ State of Illinois Circuit of Cook County, “GENERAL ORDER NO. 18.8A - Procedures for Bail Hearings and Pretrial Release,” July 17, 2017, <http://www.cookcountycourt.org/Manage/DivisionOrders/ViewDivisionOrder/tabid/298/ArticleId/2562/GENERAL-ORDER-NO-18-8A-Procedures-for-Bail-Hearings-and-Pretrial-Release.aspx>.

² Ibid.

³ Michael Lipsky, *Street-level Bureaucracy: Dilemmas of the Individual in Public Services* (New York: Russell Sage Foundation, 2010).

⁴ State of Illinois Circuit of Cook County, “GENERAL ORDER NO. 18.8A - Procedures for Bail Hearings and Pretrial Release,” July 17, 2017, <http://www.cookcountycourt.org/Manage/DivisionOrders/ViewDivisionOrder/tabid/298/ArticleId/2562/GENERAL-ORDER-NO-18-8A-Procedures-for-Bail-Hearings-and-Pretrial-Release.aspx>.

⁵ Ibid.

appear.”⁶ Higher numbers for the “criminal history” category indicate a more substantial criminal record, while many past missed court dates result in a high score for the “failure to appear” category.⁷ The tool is provided to Cook County at no cost by the Laura and John Arnold Foundation.⁸

The policy implications of Cook County’s use of the PSA tool are unclear. One press release from the Cook County Circuit Court labeled such pretrial risk assessments “a scientific approach” to standardize bond determinations, which are plagued by accusations of discretion and bias.⁹ However, local advocacy organizations such as the Coalition to End Money Bond have cautioned that this PSA tool is both racially and economically discriminatory because of its reliance on past criminal history and age to make a recommendation.¹⁰ Given the prevalence of racial discrepancies in past sentencing, the PSA tool’s algorithm may exacerbate racial bias and disparities rather than neutralize decision-making in bond court.

Pretrial Service officers calculate the PSA scores before bond court and read aloud the PSA recommendation during a defendant’s hearing. The judge is required to listen to the PSA scores and recommendation. While the General Order encourages judges to consider these PSA numbers and a defendant’s ability to pay when determining conditions of release or detention, the judge still has the discretionary authority to disagree with the PSA recommendation and to set bond amounts and conditions they believe to be “reasonable” or “necessary.”

⁶ State of Illinois Circuit of Cook County, “Court marks first year of bail order with second data release,” September 18, 2018, <http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2614/Court-marks-first-year-of-bail-order-with-second-data-release.aspx>.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Coalition to End Money Bond, “Monitoring Cook County’s Central Bond Court: A Community Courtwatching Initiative August - October, 2017,” February 27, 2018, pg. 18, http://www.chicagoappleseed.org/wp-content/uploads/2018/02/Courtwatching-Report_Coalition-to-End-Money-Bond_FINAL_2-25-18.pdf.

While the PSA tool provides a recommendation of detention or release, it does not recommend a monetary bond amount to the judge.¹¹ Judges in Cook County commonly order one of three bond types or determinations. Judges can issue a monetary deposit bond, called a D-bond, where defendants must pay 10% of the amount to be released.¹² Judges may also issue a “release on one’s own recognizance” I-bond, where no money is required to be released pretrial.¹³ Lastly, judges sometimes issue a “no bond” order, where defendants are held without bond until their case is reviewed on the next court date.¹⁴

If a judge orders a monetary bond, General Order 18.8A mandates that the judge take the financial ability of the defendant into account. To make an ability-to-pay determination before court, Pretrial Services is required to collect information from the defendant prior to the initial bond hearing.¹⁵ In practice, ability-to-pay is also determined during the bond hearing when family members or friends in the courtroom are asked how much they could post for a defendant’s bond.¹⁶ If a judge issues a “no bond” order or a D-bond above the amount a defendant indicated they could pay, the judge is mandated to schedule a follow-up bond hearing within 7 days to review the bond amount.¹⁷

General Order 18.8A also included additional policy and institutional changes to bond court. The order authorizes Pretrial Services to provide reminders or require check-ins with

¹¹ Coalition to End Money Bond, “Monitoring Cook County’s Central Bond Court,” 18.

¹² State of Illinois Circuit of Cook County, “First Municipal District Bond Courts,” 2018, <http://www.cookcountycourt.org/ABOUTTHECOURT/MunicipalDepartment/FirstMunicipalDistrictChicago/BondCourt.aspx>.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Coalition to End Money Bond, “Monitoring Cook County’s Central Bond Court,” 18.

¹⁶ Researcher ethnographic observation.

¹⁷ State of Illinois Circuit of Cook County, “GENERAL ORDER NO. 18.8A - Procedures for Bail Hearings and Pretrial Release,” July 17, 2017, <http://www.cookcountycourt.org/Manage/DivisionOrders/ViewDivisionOrder/tabid/298/ArticleId/2562/GENERAL-ORDER-NO-18-8A-Procedures-for-Bail-Hearings-and-Pretrial-Release.aspx>.

defendants before each court date.¹⁸ These pretrial services can be mandated by the judge as part of a defendant's conditions of release. Furthermore, the Chief Judge created the "new Pretrial Services Division" of the Circuit Court of Cook County to replace "Central Bond Court."¹⁹ The Chief Judge appointed 7 new judges to the Pretrial Division to replace previous Central Bond Court judges.²⁰ All judges and staff operating in the Pretrial Division were required to attend training sessions on the PSA tool, pretrial services, and General Order 18.8A.²¹ Lastly, the Chief Judge also implemented a data collection initiative. Quarterly reports of bail reform performance measures are published and available on the Cook County Circuit Court website.²²

Local advocacy groups were an important source of public and legal pressure leading to the Chief Judge's issuing of General Order 18.8A and these groups continue to monitor the order's implementation. After filing lawsuits and creating a public awareness campaign, advocacy groups, such as the Chicago Community Bond Fund, saw the Chief Judge's order as a potential avenue to eliminate pretrial detention based on a defendant's inability to pay bond. Despite this possibility, bond reform advocates' reception of General Order 18.8A has been mixed. Some criminal justice advocates have argued that General Order 18.8A has been a cautious success in improving bond court proceedings and reducing the number of people incarcerated pretrial. Other advocates, however, have been concerned that such an order may prove ineffective if not fully implemented or if alternative means of pretrial incarceration, such

¹⁸ State of Illinois Circuit of Cook County, "GENERAL ORDER NO. 18.8A."

¹⁹ State of Illinois Circuit of Cook County, "Evans names judges to serve in Pretrial Division," September 15, 2017, <http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2573/Evans-names-judges-to-serve-in-Pretrial-Division.aspx>.

²⁰ Ibid.

²¹ Ibid.

²² State of Illinois Circuit of Cook County, "Court marks first year of bail order with second data release," September 18, 2018, <http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2614/Court-marks-first-year-of-bail-order-with-second-data-release.aspx>.

as electronic monitoring, replace jail time. While high-profile Cook County government officials have joined a chorus of calls to “end money bond,” grassroots advocates have remained wary of whether General Order 18.8A is acting as an unenforceable token policy that allows government entities to subsume advocacy work and quell more radical calls to end pretrial incarceration.

Coalitions of county-level and state-wide advocacy organizations, such as the Coalition to End Money Bond, have conducted both observational and quantitative research to track the implementation of General Order 18.8A.²³ In a February 2018 report, the Coalition to End Money Bond argued that while significant improvements had been made in reducing unaffordable bonds and inquiring about ability-to-pay, one fifth of defendants still received bonds without being asked about ability-to-pay, and one half of bailable defendants were given unaffordable bonds.²⁴ While the population of Cook County is about 24% Black, the report also revealed that 72% of people incarcerated at Cook County Jail or put on electronic monitoring over a four month period in 2017 were Black.²⁵ The report argued that one of the largest obstacles to the full implementation of General Order 18.8A was inconsistency across the alternating judges who preside over bond court.²⁶ Furthermore, court-watchers noted uneven advocacy by public defenders, irregular adherence to the pre-trial assessment tool, and a generally “hectic and confusing environment” within the Central Bond Court.²⁷

Bond court policies such as General Order 18.8A and the use of the PSA tool represent a paradox for reform efforts. Defendants may now receive less punitive bond amounts and

²³ Coalition to End Money Bond, “Monitoring Cook County’s Central Bond Court: A Community Courtwatching Initiative August - October, 2017,” February 27, 2018.

²⁴ *Ibid*, 53.

²⁵ *Ibid*, 10.

²⁶ *Ibid*, 53.

²⁷ *Ibid*, 33, 39.

conditions but are still subject to a breadth of discretionary decision-making from different court actors who may be more or less amenable to the reform policies. To understand the ways in which discretionary front-line workers in bond court might influence these policy outcomes, my study explores the implementation of General Order 18.8A in Cook County Central Bond Court and the interactions between court officials and defendants who face pretrial release or detention. I seek to answer two questions. First, I ask how these court officials implement General Order 18.8A and interact with defendants and members of the public in Cook County Central Bond Court. Second, I ask to what degree General Order 18.8A encompasses defendants' perceptions of what justice and reform should look like within the pretrial system.

To answer these questions, I utilized both ethnographic observation and interviews, in addition to quantitative data. I studied interactions between court officials, defendants, and family members by observing public court proceedings at Central Bond Court on 26th and California Ave in Chicago. To incorporate the perspectives of those directly impacted by General Order 18.8A and the bond court system, I interviewed defendants, family members, and observers about their understanding of bond court, their interactions with court officials, and their perceptions of what reform looks like for the pretrial system. I also analyzed quantitative data reports by the Circuit Court of Cook County on incarceration rates and bond types before and after General Order 18.8A went into effect.

In answering my research questions, I seek to understand how recent reforms and the discretion of front-line workers contributes to, or interrupts, the operation of racial and socioeconomic inequality in Cook County Central Bond Court. I hope to explore how a system of monetary bond and procedures within Central Bond Court affect the social and economic livelihoods of not only defendants, but also of the people who live in their communities. In

interrogating racial and socioeconomic bias in supposedly race-neutral spaces and policy, I provide policy recommendations to reduce inequality in the Cook County Courts system. Lastly, I seek to understand what “reform” and “justice” mean for those individuals who have been directly impacted by bond policy and the criminal justice system more generally.

Literature Review

To answer my research questions, I draw on a variety of academic scholarship in public policy, race studies and courtroom ethnography. In this literature review, I begin by summarizing the bureaucratic performance analyses that form the first pillar of my project's theoretical framework. My investigation of front-line workers in Cook County Central Bond Court utilizes a discretion-based framework articulated by Michael Lipsky in *Street Level Bureaucracy*, and an accountability context from *Working, Shirking, and Sabotage* by John Brehm and Scott Gates. Second, I will outline how theories of the racial state and mass incarceration serve as the second pillar for my research. I will build from Michelle Alexander's *The New Jim Crow* to situate my research questions on bond court within existing literature on racism in the criminal justice system. Third, I will discuss previous scholarship and investigative journalism on Cook County criminal courts. Drawing on both Steve Bogira's *Courtroom 302* and Nicole Gonzalez Van Cleve's *Crook County*, I will articulate how my project adds nuance and specificity to these texts in the context of recent bond court reforms and grassroots advocacy.

Bureaucratic Discretion

First, a framework of bureaucratic discretion is a useful tool for my investigation of General Order 18.8A and interactions in Central Bond Court because I seek to understand how written policies are transcribed into individual decisions and experiences in bond court. Michael Lipsky's *Street Level Bureaucracy* explains how on-the-books policy is implemented and interpreted by front-line actors who operate with large amounts of discretion and autonomy. Lipsky defines "street-level bureaucrats" as those public service workers who interact directly

with citizens and who “have substantial discretion in the execution of their work.”²⁸ While Lipsky discusses many different types of street-level bureaucrats, those of particular relevance for my research are judges, public lawyers and other court officials.²⁹ Lipsky’s broad definition of front-line workers is useful because it includes agents who may not be directly employed by the institution or government agency in which they operate. I can use Lipsky’s definition of street-level bureaucrats to discuss the role of private lawyers, for example, who are not employed by the government but who nonetheless have a large discretionary role in bond court. Furthermore, this definition incorporates front-line workers who may often be neglected as research subjects when investigating bond court hearings, such as court officers and clerks. Defendants and family members are subject to a breadth of discretion in the courtroom, as their experiences are not only determined by the discretion of the judge, but also by their interactions with public defenders, prosecutors, case managers, and court officers. I therefore draw on Lipsky’s framework when observing different front-line workers in Central Bond Court and interpreting their roles in the implementation of General Order 18.8A.

Lipsky’s discussion on the hazards of the discretion and autonomy exercised by street-level bureaucrats also provides a starting point for understanding how policies, such as those in bond court, create and perpetuate different forms of racial and socioeconomic inequality. Lipsky notes that street-level bureaucrats act as agents of social control, especially in regards to the poor and other marginalized groups.³⁰ Lipsky also discusses how pressure “to routinize, simplify, and differentiate” within a social context of prejudice “leads to the institutionalization” of these

²⁸Michael Lipsky, *Street-level Bureaucracy: Dilemmas of the Individual in Public Services* (New York: Russell Sage Foundation, 2010), 3.

²⁹ *Ibid*, 3.

³⁰ *Ibid*, 11.

stereotypes.³¹ As an example, Lipsky briefly discusses racial bias, as he states that racism “affects the extent to which public employees regard clients as worthy” and influences how they create patterns of differentiation among clients.³² While the idea that racism can be tied to ideas of worth is useful to my analysis, Lipsky’s lack of in-depth discussion on racial bias and institutional discrimination is concerning. Given the prevalence of racism and racial disparities in public institutions, such as law enforcement and criminal courts, an analysis of street-level discretion, autonomy and policy implementation needs to be in conversation with theories on the racial state. I hope to put these fields in dialogue with each other through my research on Cook County Central Bond Court.

Brehm and Gates’ *Working, Shirking, and Sabotage* builds from Lipsky’s theory of street-level bureaucratic discretion and asks to whom such bureaucrats are accountable. Brehm investigates who or what controls the policy choices of bureaucrats, challenging the prevailing assumption in principle-agent theory that a supervisor influences the policy choices of lower-level bureaucrats.³³ Instead of supervisors, Brehm concludes that organizational culture and individual preference have “overwhelming importance” in determining subordinates’ level of compliance.³⁴ Brehm’s work therefore expands upon Lipsky’s to emphasize how front-line workers’ individual beliefs and attitudes toward a policy and the institutional space in which a policy is introduced can significantly affect the implementation of a supervisor’s policy. This analysis is an important basis for my research because the policy I am investigating is one written by a superior and implemented by subordinates. Although General Order 18.8A was

³¹ Michael Lipsky, *Street-level Bureaucracy*, 115.

³² *Ibid*, 182.

³³ John Brehm and Scott Gates, *Working, Shirking, and Sabotage: Bureaucratic Response to a Democratic Public* (Ann Arbor: University of Michigan Press, 1999), 22.

³⁴ *Ibid*, 146.

issued by the Chief Judge, Brehm’s research suggests that the culture and preferences of court officials on the ground will determine how the policy is implemented. Furthermore, front-line workers in Central Bond Court, such as judges and court officers, have different levels of proximity to the policy’s source, which may inform their varying perceptions of the policy and willingness to implement it.³⁵ Though Brehm focuses on federal-level workers and does not discuss court actors in *Working, Shirking, and Sabotage*, I will test whether such conclusions can be productively applied to bureaucrats who are tasked with implementing the Chief Judge’s General Order 18.8A.

Working, Shirking and Sabotage also provides an initial reference point to understanding the relationship between citizen advocacy and bureaucrat performance. Brehm suggests that the public has some means to influence the actions of bureaucrats, especially in those situations where bureaucrats come into regular contact with citizens.³⁶ In my research, I will utilize and complicate this hypothesis. I will first ask to what extent the defendants, family members and observers in the Cook County Central Bond Court courtroom represent the “public” in the eyes of street-level bureaucrats. With Brehm’s work as a starting point, I will then explore the extent to which grassroots advocacy by individuals and community organizations, such as the Chicago Community Bond Fund and the Coalition to End Money Bond, has the potential to influence the actions of front-line workers in Central Bond Court.

The Racial State

Having outlined the bureaucratic performance pillar of my research, I will now consider how my research fits within scholarship on racialized systems of governance and punishment.

³⁵ I use the terms “street level bureaucrats” and “front-line workers” interchangeably in my analysis.

³⁶ Brehm and Gates, *Working, Shirking, and Sabotage*, 197.

Michelle Alexander's *The New Jim Crow* will inform my research on bond procedures and the implementation of General Order 18.8A by providing a theoretical framework on the racial state and systems of racialized punishment. In *The New Jim Crow*, Alexander argues that in a color-blind era where race can no longer be used as an explicit justification for discrimination, American society uses the label of "criminal" to discriminate against people of color.³⁷ This work on racialized designations such as "criminal" and "felon" is critical for my analysis of Central Bond Court and court officials because racial bias may be articulated through judgments of morality and innocence. In my study, I will draw on Alexander's work on racialized labels to explore how racial injustice in Cook County Central Bond Court is perpetuated both through PSA scores that reflect a history of racialized policing and punishment and discretionary morality evaluations by court actors.

The New Jim Crow is also helpful in understanding the broader context in which a criminal justice institution is situated. Alexander theorizes that the criminal justice system is not an independent entity, but instead a "gateway into a much larger system" of racial stigmatization and marginalization.³⁸ Drawing on this understanding of criminal justice contact as a "gateway," my research interviewing defendants and family members will explore how bond hearings are a first step in a process of marginalization. I will utilize Alexander's work to investigate how the financial and temporal burden of the bond system and the pretrial system's presumption of guilt has effects far beyond the day of the bond court hearing.

A final point of analysis that I draw on is Alexander's discussion of reform efforts and revolutionary politics. Alexander cautions against seeing visible reform measures as real

³⁷ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012), 2.

³⁸Ibid, 12.

solutions to a system of racial injustice, but also argues that “reform work is the work of movement building, provided that it is done consciously as movement-building work.”³⁹ In considering the possible effects of General Order 18.8A and the extent to which pretrial bond and detention can be reformed through local advocacy, I use Alexander’s reform-as-movement-building framework. With this theoretical background, I ask whether the grassroots advocacy against money bail in Chicago can achieve both reform and movement building that is sustainable and effective in achieving its goals over the long-term.

While Alexander’s work will be informative for my research, there are limitations to her analysis that I hope to highlight through my project. As an expansive work, Alexander admits that her book “paints with a broad brush.”⁴⁰ Her focus on large-scale incarceration trends and national-level policy necessarily neglects how such forms of racial stigmatization and marginalization occur on a local scale. I therefore seek to add nuance and complexity to Alexander’s analysis by looking specifically at bond court in Chicago.

Furthermore, Alexander focuses heavily on post-conviction sentencing and the war on drugs as glaring examples of racial discrimination. While disenfranchisement of people with felony convictions and racial disparities in drug crime sentences are important areas of study, I argue that an over-emphasis on drug charges, non-violent convictions, and long prison sentences jeopardizes advocacy efforts that target the pretrial system for all defendants, including those who face “violent” felony charges and who have criminal records. Likewise, national conversations about mass incarceration focus considerably on prison sentencing and policing, not pretrial incarceration or bond procedures. Through my research, I hope to expand the

³⁹ Michelle Alexander, *The New Jim Crow*, 235.

⁴⁰ *Ibid*, 15.

conversation around the intersection of race, socioeconomic inequality and criminal justice by exploring how the pretrial bond court room serves as a critical step in a larger process of stigmatization and marginalization for poor people and people of color impacted by the criminal justice system. In my project, I will interrogate how the implementation of General Order 18.8A and interactions with court officials through the perspective of defendants, family members and observers reveal that constitutional principles of innocent until proven guilty are being violated in Cook County Central Bond Court.

Court Ethnographies

Third, I will draw on previous works that evaluate Cook County criminal courts to inform my investigation of Cook County Central Bond Court and General Order 18.8A. Published in 2005, Steve Bogira's *Courtroom 302* provides a historical and comprehensive account of various spaces and procedures in the Cook County Criminal Courthouse. *Courtroom 302* describes the negative perceptions of court judges and officers towards defendants and frequent cases of abuse and corruption within the system. Based on his observations of the courthouse and his shadowing of one judge over the period of a year, Bogira concludes that front-line workers in Cook County Criminal Court work "reflexively, not reflectively," because they have "no time to give much thought to any but the most extraordinary case."⁴¹ Expanding on Lipsky's work on discretion and administrative constraints, Bogira's analysis illuminates how court actors develop coping mechanisms to deal with high caseloads in Cook County Criminal Court, leading to routinized procedures and desensitized decision-making processes. Bogira's research also provides insight into how officials may perform differently when in a public space, as he notes that "bond court is

⁴¹ Steve Bogira, *Courtroom 302: A Year Behind the Scenes in an American Criminal Courthouse* (New York: Vintage Books, 2006), 21.

slickly choreographed.”⁴² Bogira’s characterization of bond court as “slickly choreographed” highlights both the fast-paced nature of bond court and the degree of performance and separation employed by court officials to exert moral authority and punishment in the courtroom. These observations help ground my research because they suggest that the perceptions and discretion of front-line workers in court are impacted by administrative burden, bias, time constraints, and a lack of public accountability. Though *Courtroom 302* is therefore useful for my project, it is also limited in its theoretical analysis and its picture of bond court procedure is somewhat outdated. While Bogira follows high-profile cases and trials, my analysis will focus on daily bond court proceedings that rarely garner media attention but which affect many Cook County residents.

Lastly, my research is guided by Nicole Gonzalez Van Cleve’s ethnographic research in *Crook County*, which interrogates Cook County Criminal Court proceedings through the perspective of court professionals.⁴³ Gonzalez Van Cleve relies on court-watcher observation notes, her participation as a court employee, and interviews with judges, public defenders and prosecutors.⁴⁴ Gonzalez Van Cleve’s framework of racialized cultural logics and morality rhetoric are two salient points for my analysis. First, while some court workers may “harbor racist attitudes,” Gonzalez Van Cleve argues that it is “more plausible” that workers are motivated by basic core values, but that these values are subverted by the workers’ “socialization into the practice of law” in criminal courts.⁴⁵ She then argues that these values are replaced by “cultural logics” that assist court professionals in rationalizing the racial and socioeconomic disparities they witness in their work.⁴⁶ I will investigate how such forms of “cultural logics” and

⁴² Steve Bogira, *Courtroom 302*, 18.

⁴³ Nicole Gonzalez Van Cleve, *Crook County: Racism and Injustice in America's Largest Criminal Court* (Stanford, California: Stanford Law Books, an imprint of Stanford University Press, 2016), xv.

⁴⁴ *Ibid*, xv.

⁴⁵ *Ibid*, 188.

⁴⁶ *Ibid*, 188.

“socialization” apply to front-line workers within bond court, although I expand my interview base beyond that of *Crook County* to include the perspectives of defendants and family members who interact with court officials.

Another useful point of Gonzalez Van Cleve’s analysis is her discussion of morality rhetoric. Gonzalez Van Cleve argues that “morality” is “a central currency wielded by professionals,” wherein the defendant is labeled “as immoral to the point of criminal.”⁴⁷ In observing interactions between court officials and defendants in bond court, I will rely heavily on this concept of racialized morality. More specifically, I seek to understand how racial meanings are articulated through “color-blind” language and judgments in court. Lastly, I seek to add nuance and specificity to Gonzalez Van Cleve’s analysis by incorporating the perceptions of defendants and their interactions with court officials in Central Bond Court in the context of grassroots advocacy and recent reform measures such as General Order 18.8A.

⁴⁷ Nicole Gonzalez Van Cleve, *Crook County*, 5.

Methods

For my research on Cook County bond policy and General Order 18.8A, I utilized a mixed-methods approach with an emphasis on qualitative data. I conducted ethnographic observation, qualitative interviews, and descriptive quantitative data analysis to answer my research questions. In the sections below, I describe and justify each method, while noting each method's data collection strategies and limitations.

Quantitative Descriptive Analysis of Pretrial Bond Types and Incarceration Rates

Justification, Collection Strategies and Limitations

First, I utilized numerical and graphical information on proportions of bond orders by type of bond and pretrial detention rates in Cook County since General Order 18.8A was implemented in October 2017. This quantitative information complements my qualitative observations and interviews by allowing for a more robust analysis of Central Bond Court and General Order 18.8A. For example, my observations in court covered only a small sample of all bond hearings. A comparison to court-collected information on bond types will allow me to compare my observations to numerical averages, providing a more holistic picture of General Order 18.8A's implementation.

The sources I relied on for quantitative data are the quarterly reports from the Office of the Chief Judge.⁴⁸ This data source provides detailed information about bond and charge types, pretrial detention and release rates, and changes over time since General Order 18.8A was fully implemented in October 2017. The comparison between the quantitative information on bond

⁴⁸ As of April 2019, there were five quarterly reports available, with later reports incorporating information from previous ones. These reports are available at <http://www.cookcountycourt.org/ABOUTTHECOURT/OfficeoftheChiefJudge/CourtStatisticsandReports.aspx>.

orders and detention rates and my qualitatively collected information on demographics and bond orders also allows me to investigate how current reform measurements differ from what interviewed defendants perceive as reform or justice.

There are major limitations to this quantitative descriptive analysis. First, comprehensive data on Cook County bond and pretrial detention rates are often not publicly available. The court-published reports that I perform a close reading of are part of the Chief Judge's data reporting strategies to measure the "success" of General Order 18.8A. Results may therefore be presented to highlight the order's success without external information on other mechanisms that may affect arrest and bond rates. Given the limited data points available, I do not attempt a statistical analysis of this data. Instead, I analyze any changes that are visible in the reports over time and I compare the results of this report to my qualitatively collected information on demographics and bond orders to suggest that these reports do not paint a comprehensive picture of the order's implementation. Lastly, the data and analysis are limited by the delay in publishing the quarterly reports, as the most recently available report presents data through December 2018, while my observation data was collected between January and February 2019.

Ethnographic Observation in Central Bond Court

To answer my first research question about the implementation of General Order 18.8A and interactions between court officials and defendants, I observed public court proceedings in Cook County Central Bond Court. I sat in the pews among other observers and family members. I took field notes on how court officials navigated the courtroom, which officials were present, physical descriptions of defendants and court officers, including their perceived race and gender, bond amounts, and any notable details.

Justification

Observation of bond court proceedings is the most effective method to observe the interactions between court officials, defendants, family members and observers. Observation allows me to collect data on the types of bonds set, the time spent on each bond hearing, and on how General Order 18.8A is implemented. Observation complements my interview methods by allowing me to compare the articulated experiences of defendants and family members with real-time observation of interactions and proceedings.

Data Collection Strategies

I observed full sessions of bond hearings at Cook County Central Bond Court on different days of the week during the winter of 2018-2019. I chose to observe felony bond court instead of misdemeanor bond court in order to gain familiarity with one courtroom. All of my observation hours are therefore in the felony bond court room or in common spaces within the courthouse. Since bond court can last multiple hours, I averaged 2.6 hours of observation for each visit with 18.2 observation hours overall. While I attempted to observe in front of all the presiding judges, I observed full sessions presided over by only 3 of the 7 pretrial judges.

Table of Observation Data Collection

<i>Field Visit</i>	<i>Date of visit</i>	<i>Day of the week</i>	<i>Hours (pm)</i>	<i>Total time (hours)</i>	<i>Cumulative Time (hours)</i>	<i>Presiding Judge*</i>
1	1/11/2019	Friday	1:30-4:00	2.5	2.5	Aquino
2	1/14/2019	Monday	1:25-3:30	2	4.5	Aquino
3	1/17/2019	Thursday	1:15-4:15	3	7.5	Aquino
4	1/19/2019	Saturday	12:15-3:15	3	10.5	Mayer
5	1/23/2019	Wednesday	1:15-4:15	3	13.5	Mayer

6	2/18/2019	Monday	1:20-2:40 <i>*incomplete</i>	1.2	14.7	Wood
7	2/22/2019	Friday	12:30 - 4:00	3.5	18.2	Wood

**Presiding judges have been given pseudonyms.*

Limitations

Observational research is limited by the ability of the observer to understand what is happening. First, I was limited in my ability to observe because I may have been unable to interpret different interactions or accurately describe someone's identity in ways that can answer my research questions on bias. For example, my assumption of a defendant's gender, race, or age may not align with their own sense of identity. Second, I was limited by what I could witness from the pews. I was not able to see interactions behind the court's dividing wall where defendants wait to be called for their bond hearing, and I was not able to hear whispered conversations between court officials situated farther away from me. Third, since I could only attend bond court on certain days, I may have missed differences or unique circumstances that occurred during times when I was not present. Lastly, my observation was limited by the extent to which I could remain a non-participating observer. As a frequent attendee of bond court, I was no longer a member of the anonymous public, but instead someone who was recognized by different court officials in the court room. While this facial recognition limited my ability to ask questions of court officials, fellow observers in the pews did not appear to recognize me, allowing me to carry out more authentic conversations with family or friends sitting in the pews.

Interviews of Defendants, Family Members and Observers

To understand the procedure of setting bond amounts and the consequences of the decisions made in Central Bond Court, I interviewed 10 defendants, family members and

observers who have experienced bond court. These interviews were semi-structured with open-ended questions. I recruited participants by sharing information about my study with staff at the Chicago Community Bond Fund who then provided me with phone or email contact information for potential participants. I was able to interview 10 of the 12 potential participants I contacted. I conducted interviews at locations chosen by interviewees, such as cafes or private homes. Some interviews had to be conducted at private homes because interviewed defendants were currently on electronic monitoring. Interviews were audio-recorded and lasted an average of 45 minutes.

In the interviews, I asked participants to describe their experiences in bond court, including which court officials they interacted with and what these interactions were like.⁴⁹ I asked about their understanding of their bond hearing, including the type and amount of bond they received. Lastly, I asked participants about recent reforms in bond court and their perspective on reforms to the bond system.

Since the defendants I interviewed were part of a convenience sample, their experiences and perspectives are not necessarily representative of all defendants that have appeared in Cook County Central Bond Court in the past year. The defendants and family members I interviewed varied in age from 18 to 60 years old. All were male and African American/Black. Given that defendants were recruited through contact with the Chicago Community Bond Fund, my sample of interviews is less representative than a random sample of participants. First, all the defendants I interviewed had been incarcerated pretrial at some point in the past and most had D-bonds. Their perspectives therefore differ from defendants who may have had less criminal justice system contact or who had been initially released with an I-bond. Second, the defendants I interviewed may have had more awareness of bond reform efforts due to their contact with the

⁴⁹ For full interview protocol, see Appendix A: Interview Guide for Defendants, Family Members and Observers.

Chicago Community Bond Fund and its advocacy efforts. Defendants in my sample may have therefore had different perspectives on what changes should be made to bond court.

Justification

I chose to interview defendants and family members instead of employing a different method for multiple reasons. I conducted interviews with defendants because I sought to analyze their specific use of language that would not be observable in a survey. Semi-structured questions also allow the interviewee to elaborate on their responses and be less influenced by leading questions. Furthermore, the perspectives of those who have experienced bond court will provide evidence to answer my research questions. First, defendant interviews offer insight into unobservable spaces within Central Bond Court, such as holding spaces within the courthouse. Second, interviewing people who observed court both before and after General Order 18.8A went into effect provides insight into what changes have occurred over time. Third, interviewing defendants and family members provides evidence of the longer-term consequences of court officials' decisions in bond court, such as the impact of an electronic monitoring order. Lastly, interviews about defendants' perspectives and experiences answer my second research question. These interviews reveal how General Order 18.8A compares to defendants' understandings of what justice and reform look like while also providing a basis for my policy recommendations.

Recruitment Strategies

To recruit interview participants, I relied on direct recruitment through local advocacy organizations. The Chicago Community Bond Fund connected me with interview participants. I was provided with the name and telephone number of potential participants, and I recruited the potential participants by phone before conducting the in-person interviews. Interviewees were asked for verbal consent at the start of the interview and were provided with written information

about the research. Participants were compensated \$15 for interviews. Funding for compensation came from the Comparative Race and Ethnic Studies Undergraduate Travel-Research grant.

Limitations

There are limitations to interviewing those who have experienced bond court. First, participants may be unable to recall past events or specific details about bond amounts. I therefore asked about specific moments they remembered most in bond court. Second, there are limitations on how representative the interview sample will be. I did not conduct interviews with people who are currently incarcerated at Cook County Jail because prisoners are vulnerable populations under IRB regulations and more difficult to access. I therefore necessarily excluded the perspective of those defendants who are more likely to have recently received no bond or bond amounts they were unable to pay. Acknowledging this constraint, I did interview participants who had been incarcerated in the past at Cook County Jail.

Furthermore, interviews are influenced by the expertise and identity of the interviewer. I conducted all interviews, and my identity as a young, white and university-educated female likely affected how participants responded to questions. It is important to be aware of this limitation. On the other hand, Nicole Gonzalez Van Cleve states in *Crook County* that she purposefully chose young white females as interviewers.⁵⁰ Due to expectations that such interviewers would be less knowledgeable about court systems and less aware of racial and socioeconomic inequality, Gonzalez Van Cleve argues that interviewees were more open about their perceptions.⁵¹ Given this research, I am aware of how my identity may limit access to some information, while at other times my privilege and identity will facilitate data collection.

⁵⁰ Nicole Gonzalez Van Cleve, *Crook County: Racism and Injustice in America's Largest Criminal Court* (Stanford, California: Stanford Law Books, an imprint of Stanford University Press, 2016), 197.

⁵¹ *Ibid*, 197.

Data Analysis

This section is divided between quantitative and qualitative data analysis. In the first section, I will analyze quantitative data on pretrial bonds, incarceration and release statistics available on the Cook County Circuit Court website. I also present the quantitative breakdown of demographics and bond types from data I collected during observation. In the second section, I will provide an analysis of my qualitative interview and ethnographic observation data.

Descriptive Quantitative Data Analysis

Court-Ordered Bond and Release Statistics

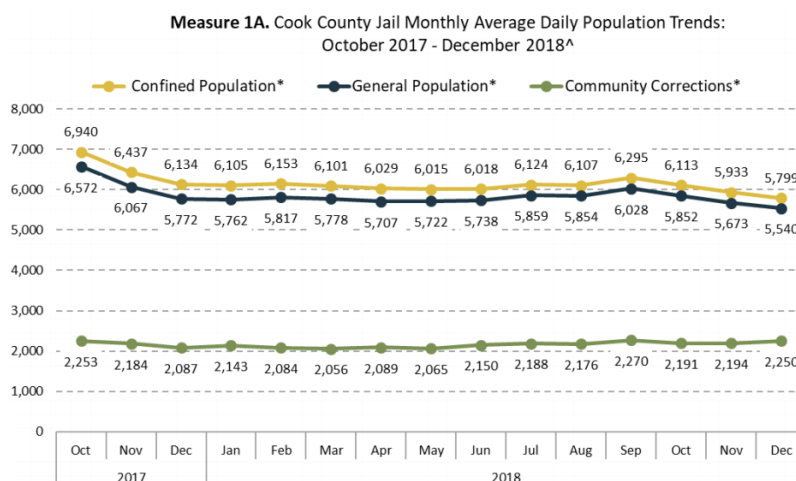
In this section, I examine quantitative information on Cook County pretrial incarceration and release rates and bond types that have been ordered since General Order 18.8A went into effect. This information is provided in quarterly reports on General Order 18.8A, which went into full effect in October 2017.⁵² I perform a close reading of the most recent report titled “2018 Q4 Model Bond Court Dashboard,” which incorporates bond court and pretrial data from October 2017 to December 2018.⁵³ This report provides evidence to answer my research questions because bond type and detention statistics over time reveal how General Order 18.8A is implemented. This data also exposes where existing data is still insufficient to analyze General Order 18.8A’s effect on bond court procedures. I will first analyze pretrial detention rates in Cook County over time. I will then examine the Circuit Court of Cook County’s reported rates of electronic monitoring, a type of “community corrections” often proposed as an alternative to jail.

⁵² These quarterly reports are available at <http://www.cookcountycourt.org/ABOUTTHECOURT/OfficeoftheChiefJudge/CourtStatisticsandReports.aspx>.

⁵³ This report can be accessed at <http://www.cookcountycourt.org/Portals/0/Chief%20Judge/Model%20Bond%20Court/Q4%202018/2018%20Q4%20MBC%20Public%20Facing%20Dashboard%2002.15.19.pdf>.

Pretrial Detention Rates

First, the “2018 Q4 Model Bond Court Dashboard” report shows that the average jail population has decreased since General Order 18.8A went into effect. The daily population in December 2018 was 5,540, compared to 6,572 in October 2017 when General Order 18.8A was first implemented (see the report’s graph below).⁵⁴ While this change represents a 15.7% decrease in the jail population, this comparison is misleading because the jail population fluctuated between October 2017 and December 2018. A closer look at the monthly data in the graph below reveals that the jail population experienced a recent decrease between September and December 2018, but before then the jail population had plateaued and was slowly increasing.



Graph 1 included in the Circuit Court of Cook County Report⁵⁵

⁵⁴ Circuit Court of Cook County, “Circuit Court of Cook County Model Bond Court Dashboard: October – December 2018,” published 7 March, 2019, <http://www.cookcountycourt.org/Portals/0/Chief%20Judge/Model%20Bond%20Court/Q4%202018/2018%20Q4%20MBC%20Public%20Facing%20Dashboard%2002.15.19.pdf>.

⁵⁵ This graph is reproduced here for reference and is publicly available in the “Circuit Court of Cook County Model Bond Court Dashboard: October – December 2018,” report which is available at: <http://www.cookcountycourt.org/Portals/0/Chief%20Judge/Model%20Bond%20Court/Q4%202018/2018%20Q4%20MBC%20Public%20Facing%20Dashboard%2002.15.19.pdf>.

The results in this report raise many concerns about the implementation of General Order 18.8A. First, it is surprising that the jail population has only decreased by 15.7% since the implementation of General Order 18.8A, given that the order was meant to eliminate pre-trial detention for unaffordable bonds. Furthermore, from October to December 2018, over 32% of defendants issued a D-bond and charged with felonies were in custody.⁵⁶ While the data is limited to felony charges, it is concerning that almost a third of defendants issued monetary bonds were still incarcerated pretrial. This suggests that monetary bonds are being set in amounts that defendants and family members cannot afford to pay. Although the jail population has decreased in recent months, the overall plateau effect of incarceration rates suggests that the jail population has been relatively stable under General Order 18.8A. This data raises the question of why the jail population, including the group ofailable defendants, has not decreased more significantly after General Order 18.8A was implemented.

Community Corrections and Electronic Monitoring Data

Another piece of data within the December 2018 report is the monthly “community corrections” population (visible in the previous graph). In a footnote, the report explains that “community corrections” refers to the combined population on the Sheriff’s Electronic Monitoring (EM) Program and on post-release from the Sheriff’s Vocational Rehabilitation Impact Center (VRIC).⁵⁷ Unlike the total confined population, the “community corrections” population has stayed relatively constant, with some fluctuation between 2,253 in October 2017

⁵⁶ Circuit Court of Cook County, “Circuit Court of Cook County Model Bond Court Dashboard: October – December 2018,” published 7 March, 2019, pg. 2, <http://www.cookcountycourt.org/Portals/0/Chief%20Judge/Model%20Bond%20Court/Q4%202018/2018%20Q4%20MBC%20Public%20Facing%20Dashboard%2002.15.19.pdf>.

⁵⁷ Ibid, 1.

to 2,250 in December 2018.⁵⁸ Interpreting this piece of data is difficult, however, because it is not clear whether policymakers would want the “community corrections” population to increase or decrease over time. Furthermore, it is impossible to separate the EM population in this data from those on VRIC post-release.

Furthermore, the report indicates that 41.8% of those defendants who were given an EM bond were still incarcerated as of December 2018.⁵⁹ Similar to the D-bond incarceration rates discussed above, this statistic is concerning because it suggests that defendants who were given conditions of release such as EM face some sort of barrier in meeting EM requirements, thereby leading to continued incarceration in Cook County Jail.

Despite limitations in interpreting these results, the Circuit Court’s decision to exclude those on electronic monitoring from the total “confined” population is itself a critical piece of data. By separating the electronic monitoring population from the “confined” population in CCDOC, the Cook County Office of the Chief Judge portrays electronic monitoring as distinct from a status of incarceration. Criminal justice advocates, however, have argued that a person on electronic monitoring is “essentially incarcerated in their home,” with a presumption that the defendant cannot leave the house for any reason, including for work, childcare or obtaining groceries.⁶⁰ The framing of electronic monitoring as an alternative to a “confined” status therefore suggests that what Cook County policymakers consider reform may not align with advocates’ or some defendants’ perceptions of what reform and alternatives to incarceration may look like within the pretrial system.

⁵⁸ Circuit Court of Cook County, “Circuit Court of Cook County Model Bond Court Dashboard,” 1.

⁵⁹ *Ibid*, 2.

⁶⁰ Coalition to End Money Bond, “Monitoring Cook County’s Central Bond Court: A Community Courtwatching Initiative August - October, 2017,” February 27, 2018, 16.

Demographic and Bond Type Data from Observation

In this section, I present qualitative data on the demographic and bond type breakdown of court sessions I observed. The tables constructed below are based on my observation notes from five full sessions of Cook County Central Bond Court and are organized by judge’s name and chronological order. I excluded two observation visits because my observation notes from these dates were not comprehensive enough in providing information about every case that went before the judge. To construct the tables, I created demographic categories based on the information I collected on race and gender. I then created columns based on the variety of bond orders I observed in court. While the bond order category explanations are provided in the footnotes for the January 14th court session table on the following page, the demographic abbreviations I use in the court session tables are explained in the table below.

Combined Race/Ethnicity and Gender/Sex Category⁶¹	Abbreviation in Tables
White female	WF
Hispanic/Latinx female	HF
Black/African American female	BF
Identified female (no race/ethnicity information)	IF
White male	WM
Hispanic/Latinx male	HM
Black/African American male	BM
Identified male (no race/ethnicity information)	IM

The following tables also present the “totals” for both bond order types and combined race and gender categories. As discussed in later sections, this data demonstrates that bond order types can vary across different days and judges, with some patterns visible across observation periods.

⁶¹ As I discussed in my methods section, my observation-collected data on demographics is limited by the ability of the researcher to accurately identify someone’s identity characteristics. My perceptions of someone’s identity, including perceived race or ethnicity and a person’s gender or sex, may not align with how that person identifies themselves. When I was not confident that I could identify someone’s perceived race or ethnicity or if that person was not present in the courtroom, I sorted this person into the “IF” or “IM” categories, denoting “identified female” or “identified male.” Gender or sex categorization was based on the court’s labeling of defendants as “female” or “male.”

1-14 Judge Aquino

Race/ Ethnicity Gender/ Sex	I-Bond ⁶²	I-Bond + PS ⁶³	I- Bond + EM ⁶⁴	D- Bond	D- Bond* ⁶⁵	D- Bond + EM	No Bond ⁶⁶	Other ⁶⁷	Total
WF		1							1
HF									-
BF							1	1	2
IF									-
WM		1							1
HM	2, 3 [^]	1*		3		1		1	11
BM	12, 3*, 4 [^]			6			4	1	30
IM				1					1
Total:	24	3	-	10	-	1	5	3	46

1-17 Judge Aquino

Race, Gender/ Sex	I- Bond	I-Bond with PS	I-Bond + EM	D- Bond	D-Bond*	D-Bond + EM	No Bond	Other	Total
WF	1 [^]								1
HF									-
BF	2, 1 [^]						1*		4
IF	1								1
WM	2								2
HM	2, 1 [^]			5			1		9
BM	20, 4 [^]	1		4	1	1	3	2	36
IM				1					1
Total:	34	1	-	10	1	1	5	2	54

⁶² Within the I-Bond category, ^ refers to “Deferred Prosecution Program.” The Deferred Prosecution Program is usually available for defendants with controlled substance charges and includes classes on drug abuse. To participate in the program, defendants forgo a preliminary hearing and are almost always given I-bonds.

⁶³ PS refers to Pretrial Services, which includes a monitoring or check-in system for defendants who are released.

⁶⁴ EM refers to electronic monitoring, also referred to as house arrest. EM requires that a home address be identified and approved by the Sheriff’s Department before a defendant can be released from Cook County Jail. EM requires defendants to wear an ankle bracelet. Defendants must apply for “movement” to attend doctor’s visits, go to work or to change home addresses. A “T” symbol within the EM column of the table signifies that the defendant was labeled as “transient,” or homeless, and therefore will require a “Safe Haven” shelter to be identified for EM before that defendant can be released from jail.

⁶⁵ *denotes a “violation of bail bond” or an active warrant. The defendant will be held until a future court date on a warrant or because their current charge is a violation of a previous bond. The type of bond that is recorded here will apply once the defendant goes before another judge for the bail violation or for the active warrant.

⁶⁶ No Bond means that defendants are detained in Cook County Jail and cannot be released until a future hearing.

⁶⁷ “Other” refers to cases that do not fit into one of the previous categories. For example, a case may be dismissed, and the person will be released without any bond because there is no pending charge against them. “Other” also includes warrants out of other counties other than Cook County.

1-19 Judge Mayer

Race, Gender/ Sex	I-Bond	I-Bond with PS	I-Bond + EM	D-Bond	D-Bond*	D-Bond + EM	No Bond	Other	Total
WF	1								1
HF	3				1		1		5
BF	1	1		1	2		1		6
IF									-
WM	1				1		1		3
HM	1*	3, 3*				1	1		9
BM	5, 1*	12, 1*	1, 1*	2, 2 (PS)	6	7, 1 (PS)	5	1	45
IM		1							1
Total:	13	21	2	5	10	9	9	1	70

1/23 Judge Mayer

Race, Gender/ Sex	I-Bond	I-Bond with PS	I-Bond + EM	D-Bond	D-Bond*	D-Bond + EM	No Bond	Other	Total
WF	1								1
HF	1								1
BF	2						1		3
IF									-
WM	2			1					3
HM	6								6
BM	21, 1^	3	2	2		5	5		39
IM							2		2
Total:	34	3	2	3	-	5	8	-	55

2/22 Judge Wood

Race, Gender/ Sex	I-Bond	I-Bond with PS	I-Bond + EM	D-Bond	D-Bond*	D-Bond + EM	No Bond	Other	Total
WF									-
HF									-
BF									-
IF			1 (T)			1			2
WM	3		2						5
HM	2, 1^	1	1	1	1		1		8
BM	1, 4^, 1*	11	7, 3 (T)	1, 2 (PS)		8	6, 1*		45
IM									-
Total:	12	12	14	4	1	9	8	-	60

The demographic and bond type information presented in these tables describe how General Order 18.8A disproportionately affects a subset of the Cook County population and its implementation is often more complicated than it may appear in Circuit Court quarterly reports. First, these tables suggest that Black men are overrepresented as defendants in Cook County Central Bond Court. According to the U.S. Census Bureau, Black residents comprised 24% of Cook County residents in 2017.⁶⁸ In the above tables of observation-collected demographic information, however, Black men comprised between 64.28% and 75% of all defendants who appeared in Cook County Central Bond Court. Furthermore, Black men comprised a majority of those defendants given D-bonds or No Bond orders in almost all the observation periods. It is important to note that this qualitative data does not reveal causal evidence about why Black men are over-represented in this data, nor is this data necessarily representative of the “average” bond court makeup. Despite these limitations, however, I argue that this demographic information affirms the racial imbalance in pretrial justice—there is an overrepresentation of Black people in this process. Policymakers should therefore be cognizant of how the implementation of General Order 18.8A has significant stakes for racial inequality in the city of Chicago.

Furthermore, the data presented in these tables reveals that the implementation of General Order 18.8A is difficult to track because bond orders cannot be easily divided into I-Bonds, D-bonds, EM and “No Bond” orders. In many cases, judges may order I-Bonds with Pretrial Services, which requires additional monitoring measures for defendants. In other cases, some judges order EM on top of a D-bond, requiring a defendant to be incarcerated on house arrest after paying bond. In the last table, there are four EM orders labeled with a “T,” signifying that

⁶⁸ U.S. Census Bureau, “Cook County, Illinois: Quick Facts,” accessed April 2019, <https://www.census.gov/quickfacts/fact/table/cookcountyillinois/PST120218>.

the defendant was transient, or homeless, and therefore would only be released pretrial once a “Safe Haven” shelter could be identified for that defendant to reside 24 hours a day. This data therefore demonstrates that an I-bond is not without monitoring requirements and an EM order does not necessarily lead to a quick release from jail. While the data presented here is correlational and not comprehensive, the evidence presented in these tables does reveal why race and racial inequality are implicated in an analysis of the implementation of General Order 18.8A.

Interview and Ethnographic Observation Analysis

In addition to over 18 hours of ethnographic observation, 10 interviews with defendants, family members and observers were conducted for this project. In general, defendants’ descriptions of their experiences in bond court reflected my observations and illuminated the serious consequences of each bond hearing. To answer my first research question, I analyze how discretion, bias and differences between court actors lead to an uneven implementation of General Order 18.8A and often hostile interactions between court officials, defendants and family members. In answering my second research question, I investigate how bond hearings serve as one step in a process of mistrust, frustration and marginalization for defendants. Furthermore, my observations and defendant interviews raise questions about assumptions of guilt and innocence for those people facing pretrial release or detention in Cook County.

Drawing on grounded theory as a theoretical approach to research, I divided my analysis into themes that emerged from my data collection. I then performed a content analysis to recode my observation notes and interviews for the emergent themes. In this section, I will discuss five major themes that emerged from my qualitative data. First, I analyze the daily discrepancies between judges in implementing General Order 18.8A and judges’ shared use of morality rhetoric. Second, I investigate the influence of family presence on bond orders and ability-to-pay

determinations. Third, I interrogate the assumption of criminality built into the PSA tool and interactions between court officers, defendants, and observers. Fourth, I discuss the positionality of the public defender in the courtroom and within defendants' perceptions of injustice in the pretrial system. Lastly, I outline the negative impact of pretrial incarceration or electronic monitoring on defendants, their families and their communities.

Daily Discrepancies: Discretion and Judges

Cook County Central Bond Court is a space of both routine continuity and day-by-day inconsistencies. Bond court operates 365 days a year and court officials have consistent responsibilities and customs to execute their jobs. Despite these continuities in roles, however, the discretionary decision-making of each individual court actor means that the experience of bond court for defendants and family members is shaped by these overlapping realms of discretion and can be drastically different depending on the day.

In my study of the implementation of General Order 18.8A, I observed that one of the most central court actors to influence the proceedings is the judge who presides over each court session. The 7 pretrial judges rotate in their locations and schedules within the Cook County Criminal Courthouse building. As noted in the methods section, my ethnographic observation took place in front of 3 of these 7 judges—Judge Aquino, Judge Mayer, and Judge Wood. I was able to observe court in front of each of these judges at least twice. Through my repeated observations, I observed patterns and discrepancies between judges in their demeanor, adherence to General Order 18.8A and the PSA tool, and interactions with defendants and family members. Judges Aquino, Mayer and Wood often represented a continuum in their adherence to PSA scores and ability-to-pay determinations but showed some continuities in their moral judgments of defendants. My observational data suggests that discretionary authority and a culture of moral

judgment are a central component of the operation of Cook County Central Bond Court and an impediment to the full implementation of General Order 18.8A. In the sub-sections below, I will analyze the differences and similarities across the judges I observed.

Judge Aquino

During observation periods, I observed Judge Aquino to demonstrate an apparent adherence to General Order 18.8A's goal to reduce unaffordable bond amounts and pretrial incarceration rates. Judge Aquino often acknowledged family members in the courtroom with a "thank you for being here" and incorporated family member ability-to-pay into D-bond amounts. Compared to the other judges I observed, Judge Aquino seemed more hesitant to use electronic monitoring and was much less likely to order pretrial conditions when giving a defendant an I-bond. Judge Aquino frequently checked for understanding by asking defendants "do you understand?" after issuing an order or special conditions of bond.

However, instead of formal mechanisms of pretrial punishment, Judge Aquino employed more informal mechanisms of judgment, such as morality rhetoric, to convey a sense of gravity to defendants and members of the public in the courtroom. For instance, Judge Aquino used common refrains to provide an informal mechanism of judgment for defendants. Judge Aquino frequently told defendants that "I don't want to see you in this courtroom again" and to "stay out of trouble and show up to court." Speaking to young defendants, Judge Aquino also intoned that "you are on a bad path right now" and that "you have to choose which path you want." If defendants had recently completed a college degree or had a job, Judge Aquino would weigh this positive accomplishment against their case, saying, "you have a lot of good things going for you, this is not one of them" or "congrats on finishing the classes but this isn't the next step you want to take" to defendants who were issued I-bonds for nonviolent offenses.

Judge Aquino also singled out defendants who appeared disrespectful of court proceedings. When a young defendant shook his head and expressed disbelief and anger on his face when the prosecutor read a description of his alleged crime, Judge Aquino told him that “shaking your head and scoffing and making faces ain’t going to do it.” When another young defendant chuckled during the bond hearing, Judge Aquino told the courtroom that “what is facing me is different from what the gallery sees,” and that the defendant is facing his felony charge “not with the gravity that he should,” leading him to order a monetary bond and electronic monitoring not recommended by the PSA tool.

Judge Mayer

Judge Mayer often displayed both a routinized formality in her interactions with defendants and a willingness to adapt bond determinations to specific cases. Less likely to thank family for their time than Judge Aquino, Judge Mayer did note the presence of family for ability-to-pay determinations. For instance, in one case where the defendant could post “\$100,” Judge Mayer asked, “has someone consulted with family?” The family indicated to the public defender that they could contribute an additional \$100. Judge Mayer noted that this amount was “sufficient” and then ordered a \$2,000 D-bond. In this case, Judge Mayer maintained a sense of distance from family members in the courtroom but successfully inquired about ability to pay to prevent the defendant from being incarcerated pretrial.

While Judge Mayer displayed a willingness to adapt bond orders to the specific case before her, these bond orders often included pretrial services and EM orders in excess of what the PSA tool recommended. I observed Judge Mayer to frequently order EM, often ordering EM in addition to a monetary bond. Judge Mayer would ask the public defender whether EM was possible for their client when the PSA tool did not recommend court-ordered EM. This request

about EM often appeared to take the defense attorney by surprise, leading them to ask the defendant or to turn around to ask family members in the pews whether they had an address where house arrest would be possible. In one case, Judge Mayer indicated she was considering EM. However, when the public defender indicated that his client was “transient,” or homeless, Judge Mayer instead ordered an I-bond. While this example indicates that Judge Mayer took the defendant’s circumstances into account, the fact that Judge Mayer amended her order to issue an I-bond without EM indicates that EM may be issued in some cases simply because defendants do have an address for house arrest, and not as a strict alternative to a monetary bond.

Although Judge Mayer used less morality rhetoric than other judges, she also appeared to have a set of stock phrases for certain bond orders. When ordering a “no bond,” Judge Mayer would preface this with a statement that “release is not appropriate in this case.” If Judge Mayer asked about ability to pay and the amount was too low, Judge Mayer would take a moment to review and then say the requested amount was “not quite sufficient” to ensure compliance. When subsequently ordering a bond amount above the ability-to-pay level, Judge Mayer would indicate that she believed the bond to be a “non-oppressive amount” but that the public defender could ask for a follow-up hearing to “reconsider” bond within 7 days. Interviewees noted, however, that these follow-up hearings rarely guaranteed a lower monetary bond.

Judge Wood

Of the three judges I observed, Judge Wood was the most explicit in his divergence from General Order 18.8A’s use of the PSA tool and ability-to-pay determinations and in his employment of morality rhetoric and a politics of respectability in the courtroom. In multiple cases, Judge Wood stated that “I respectfully disagree with the PSA tool,” or “I respectfully disagree with the PSA recommendation of no conditions.” Judge Wood made these statements

while ordering conditions of release when the PSA tool had recommended release with no conditions. Judge Wood would also order monetary D-bonds without inquiring about a defendant's or family members' ability to pay. With these simple maneuvers, Judge Wood was able to bypass the "reasonable" bond and ability-to-pay requirements of General Order 18.8A to give a bond order that did not take a defendant's circumstances or ability to pay into account.

In addition, Judge Wood employed "tough love" morality rhetoric for both defendants and family members, perpetuating socioeconomic inequality in the courtroom. For instance, Judge Wood exhibited an interest in whether defendants were working or attending school. When public defenders started mitigation speeches, Judge Wood would interrupt to ask directly: "is your client working?" In another case where the public defender asked that the defendant be allowed to attend school while on EM, Judge Wood granted this exception and told the defendant to "go to school, get an education." While adapting his order, Judge Wood voiced a prescriptive judgment of what the defendant should be doing—going to school—with the implication that this is how he will stay out of trouble. Judge Wood's inquiries therefore reflected a perpetuation of socioeconomic inequality within the courtroom, as those with jobs or education were assumed to be productive citizens and therefore more "deserving" of I-bonds or less restrictive release conditions. Given the history of racial segregation and the unequal access to educational and job opportunities for different neighborhoods in Chicago, these determinations of merit for pretrial release create and maintain socioeconomic and racial inequality in the courtroom, identifying an "unproductive" or "surplus" population that can be locked up pretrial.

Judge Wood also showcased a prioritization of certain forms of family support over others. I often observed that most of those family members in the courtroom pews were Black women. I also observed that Judge Wood rarely recognized family support on the record. In one

case, however, a young Black male defendant was before Judge Wood on a charge of having a fake license. When reviewing the case, Judge Wood looked to the pews and asked the Black middle-aged man standing in support of the defendant if he was the father. When the man nodded, Judge Wood's attitude seemed to change as he stated that it is "rare that I see a father in the courtroom." Judge Wood then urged the defendant to look "at the pain on his [father's] face." Judge Wood stated again that "I don't see many fathers in this courtroom," and then ordered an I-bond and pretrial supervision for the defendant, telling him that "sometimes its just a hiccup in life, but we can get over it." Despite the many mothers present in the courtroom for their loved ones, Judge Wood indicated to the courtroom that having a father present was worth more, and that this charge was just a "hiccup" in comparison to the situations that other defendants faced.

Lastly, Judge Wood employed questioning tactics to determine whether defendants were truthful about their mitigation factors, reflecting the use of "moral" circumstances as a proxy for morality and guilt. When I observed Judge Wood's courtroom, I noticed that public defenders more frequently mentioned the religious denominations of their clients and even specified which churches defendants attended. Judge Wood appeared to consider church attendance as an important mitigation factor because he often then directly asked the defendant "who is the pastor" at that church. While Judge Wood once joked to a defendant that "if you don't know then you're going to jail," this exaggeration still reflects a dangerous conflation of religious piety with being deserving of a lower bond. While the mitigating factor of church attendance may help one defendant obtain an I-bond, moral judgments of this kind disadvantage others who do not participate in this institution and reflect the discrepancies in treatment between different judges.

The discrepancies between judges and the shared use of morality rhetoric are a cause for concern in the implementation of General Order 18.8A because the experiences of those who

attend bond court can differ drastically based on the day of the week and which judges, court actors, and attendees are present in the court room. Furthermore, judges' shared use of morality rhetoric and justification phrases for giving a bond amount above the PSA recommendation or a defendant's ability to pay demonstrate a tension between the on-paper policy of General Order 18.8A and the actual willingness of front-line workers to implement this policy. Given that my data collection took place on certain days and times of year, I do not argue that my observations are representative of all judges and I do not make causal claims about specific judges and rates of different bond types or incarceration rates. Despite these limitations, however, the differences I observed in judges' implementation of General Order 18.8A call into question whether this reform can be successfully enforced within a space marked by inequality and moral judgment.

Ability-to-Pay and Family Support at Bond Hearings

The public observers of Central Bond Court proceedings at 26th and California Ave are largely comprised of family members and friends of someone who was recently arrested and has their first bond hearing. All members of the public enter the courthouse through the front doors, sign in their phones at the desk, and go through security. Bond hearings for felony charges take place in a large room at the end of a long hallway. On busy days the dark wood pews are packed with people, while the first two rows, reserved for police officers, private attorneys and court staff, sit largely empty. When the judge enters from a door behind the raised dais, a court officer orders "all rise." Once everyone in the courtroom sits back down, court is in session. Pursuant to General Order 18.8A and recent reforms to bond court, the judge dedicates a few minutes to explaining the bond hearing process and what to do when a loved one's name is called. The judge then calls the first name on the list, which is usually fifty or sixty names long.

Informal Implementation of Ability-To-Pay

When a name is called, any family, friends or supporters of the person stand where they were sitting in the pews. The judge reads the charges, and asks pretrial, state, and the defense lawyer to each speak in turn about the case. If family is present, a pretrial or public defense official, often called a case manager, may approach the standing family or friends and ask them how much they could post for a money bond. This whispered conversation sometimes only takes seconds, if a parent quickly says an amount, often ranging from 50 to 500 dollars. Other times the person appears uncomfortable at being asked how much money they could pay. After a hushed conversation with the official, the family member or friend may suggest an amount, or they may simply shake their head to signify they have no money they could pay at that time.

The case manager then communicates the monetary amount to the judge or the public defender. Some case managers make eye contact with the judge during the defendant's hearing and hold up one or several fingers to the judge to signify bond amounts between 100 and 1,000 dollars. Other case managers stage-whisper this amount to the public defender, and the public defender then incorporates this "ability-to-pay" amount into their mitigation speech to the judge.

This informal process of determining ability-to-pay may appear surprising to court newcomers, but this mechanism often provides an advantage for defendants who have family members or support in the courtroom. General Order 18.8A mandates the use of a preliminary meeting between a public defender and a defendant to ask about a defendant's ability-to-pay before bond court. These preliminary meetings, however, are often insufficient to determine ability-to-pay because defendants may not know about additional funds that family or friends could contribute to their bond amount. Furthermore, a judge may review a case before court is in session and indicate to the public defender that a monetary bond will likely be ordered above the amount recorded in the preliminary meeting. In this instance, the informal ability-to-pay

mechanism provides an opportunity to defendants with support present in bond court to indicate a monetary bond amount the judge may accept. This advantage is of subtle importance in the felony pretrial courtroom, as a family's presence and their answer to the ability-to-pay question can determine whether their loved one will be released or incarcerated pre-trial.

Inequality in Family Support

A standing family member or friend in the courtroom signifies to the court that the defendant is not without advocates or support. Some judges make a point to say, "I'll note that there are family and friends here" during a defendant's hearing. If the defendant's case is later in the queue and the family has been waiting an hour or more, that judge may then say, "thank you for being here" and "thank you for your patience." This direct nod to a family's presence appears as a sign of respect for their time in coming to court, but such statements also reflect a judge's interest in whether a defendant has a family support system.

The presence of a support system can signify different things to the court. My observational data suggests that a judge may be more likely to release a young defendant if both parents come to court because the parents might be perceived as helping keep the young person accountable. Parents might encourage the defendant, as one judge frequently intoned, to "show up to court and stay out of trouble." Family presence can also persuade a judge to consider electronic monitoring (EM) as an alternative to pretrial detention with a high monetary bond. Lastly, a support presence bears witness to the court's proceedings and provides an opportunity, although limited, for advocacy on behalf of defendants. While not allowed to speak, standing family and friends are able to convey their perceptions of the proceedings by nodding and smiling when the judge announces an I-bond. The same family member or friend may instead

shake their head and frown when the judge decides the amount they can post for their loved one is “not sufficient to ensure compliance” with all conditions of release.

However, family presence often appears as a dividing factor between those with support and those without. While some defendants may receive a more “lenient” bond due to family presence, such an emphasis on having family or friends in court privileges those who have more robust social networks and those with the means and resources to have this support in attendance. Considering that preliminary bond hearings are held at 1:30 pm on weekdays and 12:30 pm on weekends, many people may be unable to attend court because it is in the middle of a work day. Even defendants with family support are unable to take advantage of this advocacy if their family is absent at the time of the hearing. After commenting on how grateful he was for his own extensive support system, one defendant noted:

“A lot of people end up getting railroaded, you know, and they don't have families showing up to court. I mean, they look at it like you don't have nobody that cared for you, you know what I'm saying? Ain't nobody gonna really be applying no pressure and asking them what's going on if ain't nobody coming to court for you. So they can just really do whatever they want to do with you, they could mistreat you.”

When describing the consequences of not having family in court, this defendant expressed mistrust of various actors within the system. Like many other interviewees, he grouped the judge, the state, and the public defender into one actor: “they.” Having experience with the criminal justice system, this defendant recognized the importance of family applying “pressure” and “asking” questions. In his view, the absence of such advocacy leads to abuse and mistreatment, since without support, “they can just really do whatever they want to do with you.” Many other interviewees also emphasized the importance of a support network, and by extension, expressed a similar lack of faith in the advocacy of the public defender or the good intentions of other court officials.

Moral Judgment through the PSA Tool and Court Officers

Criminality and the PSA Tool

The PSA tool was created to provide a more standardized determination of risk based off a database of past criminal cases. The adoption of the PSA tool was a critical component of General Order 18.8A and has been integrated into Cook County Central Bond Court. Based on my ethnographic observation and interview data, I argue that the PSA tool serves as a double-edged sword to both help and harm reforms that attempt to reduce inequality within the pretrial bond system. I examine the potential harms of the PSA tool by exploring the relationship between criminal history and PSA scores.

When the judge asks the Pretrial Service officers for the PSA recommendation in Central Bond Court, the first number given is a “criminal history” score between 1 and 6. This “criminal history” score determination is based on statistical evidence from aggregated outcomes of past criminal cases. Based on a strong correlation between past and present criminal cases in this aggregated data-set, the PSA tool relies on a conclusion that past criminal behavior can accurately predict future criminal behavior. People with records are more likely to get higher scores and less likely to be recommended for pretrial release. Relying on the past to predict the present may seem logical from a “neutral” or “scientific” standpoint. Such “evidence-based” predictions become more dangerous, however, when they are placed within a rhetoric of criminality and guilt.

While most defendants I interviewed did not recall hearing their PSA scores, one defendant who was familiar with the PSA tool expressed skepticism of its use. This interviewee described what he viewed as the inequality built into the tool:

“They said it's not like racial profiling and it so much is. I'm sorry, I'm just being honest, it definitely is... I feel like it don't make sense in how you try to assess if this person is good or bad. Because... a person has the same case and got treated differently.”

This interviewee articulated a mistrust in the PSA score because of the history of racial profiling related to the criminal cases that form the tool's algorithm. This defendant also noted how the PSA score can lead to different treatment for those defendants who have criminal records in comparison to those people with low PSA scores. The use of the PSA tool's criminal history category therefore raises questions about the assumptions of innocence and guilt within the American criminal justice system. By using criminal history to predict the risk of future criminal behavior, the acceptance of the PSA score and its recommendation reinforces the label of “criminal” as a long-term mechanism of stigmatization and marginalization.

In many ways, the assumption of innocent until proven guilty no longer applies to people with records in Cook County Central Bond Court. When asked about his experience in bond court, one defendant described this assumption of culpability:

“When they look at my background, I'm already guilty, you know what I'm saying? Like versus a person who doesn't have a background versus somebody who got two, three cases already, who's been in prison twice, you know what I'm saying? And they looking at them like, “well, we already done. We know where, what he going to do anyway, you know, so just keep doing what we've been doing to him. Keep getting them out of the way, give them all time.”

While reforms such as General Order 18.8A are supposed to make bond hearings more standardized, this interviewee argues that “I'm already guilty” based on “my background.” Here this defendant further articulates an understanding of all the court officials under one umbrella term of “they.” By switching from first person, to “him,” and then to “them” when describing defendants, this interviewee is describing what he perceives to be a routine and systemic problem of bias. In saying that court officials are “already done” and “know where” they are going to keep sending defendants like him, this interviewee understands bond court as “guilty until

proven innocent.” This defendant’s perspective raises questions about how assumptions built into American legal rhetoric do not carry weight for on-the-ground implementation of “justice.”

Guilt and Moral Judgment in the Courtroom

Guilt is also reinforced through the norms of the courtroom and interactions between court officials, defendants, and members of the public. People are kept in a “bullpen” for hours before appearing before the judge. During a defendant’s hearing, prosecutors may spend minutes reading hearsay evidence with an accusatory tone, often pausing for dramatic emphasis on negative details. Prosecutors then list past criminal history. If none exists in the database, the prosecutors emphasize that there is no “publishable” history, implying that there could be sealed juvenile delinquencies. The public defender then usually gives mitigation factors in a monotone manner that does little to counteract the vivid picture of criminality painted by the prosecutor.

Court officers are one group of court officials that play a significant role in assessing guilt and morality in the courtroom. Court officers are tasked with “maintaining order in the courtroom,” with the authority to reprimand members of the public who they deem to be too loud or distracting. Court officers roughly admonish defendants who appear before the judge without their hands closely held behind their back. Court officers frequently shush family members and friends in the pews, ordering them to remove winter hats as soon as they walk in the door or to leave the room if there is not enough space in the pews. When the judge is speaking and there is whispering in the pews, court officials may interrupt to loudly call for “quiet in the courtroom.” Given their association with “guilty” defendants appearing in court, members of the public are therefore subject to a reproofing and suspicious gaze by court officers.

While court officers do not wield the decision-making authority of judges, they do employ a discretionary and informal mechanism of judgment and punishment to condemn defendants and observers they perceive as guilty in the courtroom. Some court officers verbalize their moral judgments and may encourage “buy-in” of other observers to denounce defendants during their bond hearings. During one observation period, I was seated close to a court officer standing to the left of the pews. When the prosecutor described one defendant’s criminal background of 6 prior felonies, the court officer said, “Six? Oh my god, what’s left of him?” While this statement was not loud enough to disrupt the proceedings for the prosecutor, this moral judgment of a defendant as having nothing “left of him” because of his criminal history was audible to a number of family members and observers in the pews. As a front-line worker that interacts directly with members of the public, this court officer therefore employed a moral commentary that served to mirror or build upon the formal bond determination of the judge.

These court officials engage in discretionary policy implementation that can significantly impact someone’s experience in court even if these court officials are not perceived as the primary “decision-makers” in the bond courtroom. These examples of court officer behavior are not representative of all interactions between court officers and family members. These observations do indicate, however, that these court actors who may be labeled as insignificant in determining bond orders nevertheless influence how members of the public experience the courtroom and are labeled as guilty before being proven innocent.

Public Defenders: Defending the Public?

One of the most common sentiments expressed by interviewed defendants was a lack of trust toward public defenders, and by extension, a lack of faith in the ability of the criminal justice system to enact justice. While some interviewees acknowledged that large caseloads put

public defenders under significant strain, many agreed that their lack of true representation was a central failing of the pretrial bond system. Since the first bond hearing often takes place within 72 hours after a defendant is arrested, the public defender's main purpose in Central Bond Court is to collect information about the defendant that will persuade the judge to set a "reasonable" bond. Such information includes a defendant's education, family, work and ability-to-pay.

Public defenders collect this information in a quick meeting with each defendant the morning of their bond hearing. The public defender who collects this information is usually not the same one that represents the defendant in the initial bond hearing. These meetings often take place in the "bullpen" where all the defendants are kept together before court is in session. One defendant described this preliminary meeting:

"We were sitting in the bullpen... [A] public defender comes in through the side... it's like an assessment test and they go off for like your job, school, kids. Are you working? Are you taking care of the kids? Do you have a wife? Stuff like that... I guess it's pretty much to help see if they can get you a lower bond or an I-bond."

This defendant noted that the purpose of this meeting was not to collect mitigating evidence for the eventual case against him, but instead to collect general information that "can get you a lower bond." This interviewee also noted the three general areas that public defenders emphasize when speaking before the judge: "job, school, kids." Evidence from ethnographic observation confirms that these three areas are at least mentioned by public defenders in most cases.

During a defendant's hearing, the information that appears most convincing to the judge is evidence of a "job," or current employment. When defendants have a full-time job, the judge often notes this when ordering an I-bond, EM or a D-bond that considers a defendant's ability-to-pay. Two cases with identical charges can result in detention for one and release for another due to a difference in stable employment. While it is encouraging that judges are considering a

defendant's financial responsibility when determining bond, such an emphasis on work over family obligations or other factors disadvantages those that face significant barriers to employment. Given the higher unemployment rate for Black residents in Chicago and the structural barriers to gainful employment that many residents on the South and West sides of the city face, such employment-based value judgments reinforce disadvantage.⁶⁹ By incarcerating the "unemployed" pretrial, the bond court system further limits defendants' ability to secure employment because they lose time and gain records while incarcerated for months or years.

While public defenders present the information gathered in these quick meetings to the judge, both defendant interviews and ethnographic observation illustrate that the way in which such information is presented to a judge often appears insufficient and unconvincing compared to the prosecutor's narrative. In many cases, especially when defendants have a record, the prosecutor speaks for multiple minutes. The judge then calls on "defense" to respond on behalf of the defendant. The defense attorney's speech is often no longer than 30 seconds. During this time, the defendant's lawyer outlines the above information about a defendant's education, family and work background, often in a hurried or monotone voice.

Defendants often noted in interviews that they did not feel adequately represented by public defenders during their first bond hearings or in later bond hearings. One defendant described his frustration due to a perceived lack of advocacy:

"When I finally get up, when my public defender... don't have no paperwork, nothing said that way that's making me look like a citizen. All they looking at it is now, like I'm a menace to society because of my case. Oh, I got a lot of fight background, well now's its against the police officer, it's me against the world."

⁶⁹ Tanveer Ali, "110K more Chicago area-residents are working since 2010, but blacks lag behind," *Chicago Sun Times*, December 5, 2018, <https://chicago.suntimes.com/news/unemployment-labor-force-recession-blacks-hispanics-census-working/>.

This defendant connects his public defender's lack of organization and communication to his perception of judgment in the courtroom. When his public defender has "no paperwork" and fails to make him "look like a citizen," the only narrative left to judge him on is one that frames him as "a menace to society." The narrative then rests on the prosecutor's emphasis on his "background" and the circumstances of the case, which was a charge of assaulting a police officer. In this defendant's view, the public defender should be the line of defense that reminds the court of a defendant's humanity and life beyond the crime that he allegedly committed. When the public defender fails to defend him, his case transforms from his word "against the police officer" into "me against the world." Without adequate representation by a defense lawyer, the defendant, in both perception and reality, is alone against the state and against society.

This critical view of defense lawyers did not extend to the private attorneys that sometimes appear in preliminary bond hearings. Based on my observation in Central Bond Court, private attorneys are hired by only a few defendants. On an average day in the felony bond court room, only about 5 defendants have hired private lawyers by the time of their first bond hearing. When a case is being represented by a private attorney, these cases get priority and are heard first before all other cases. This procedure allows private attorneys to spend the minimum amount of time waiting for a case to be called, therefore lending some efficiency to the turnover in defense representation. Such a procedure, however, further reinforces socioeconomic inequality in the courtroom by prioritizing those defendants who can afford a private attorney.

Defendants are acutely aware of the ways in which representation by a public defender disadvantages their chances in bond court compared to a private attorney. One defendant summarized the problem:

“I need help. I have a public defender. I don't have a private attorney. So that's way more difficult because this person is dealing with over a hundred people a day. So that's one thing that I do understand the public defenders have to go through as well. But I feel like serious cases, take time out and go reach out to this person because you don't know what they're going through.”

This interviewee acknowledged that structural barriers prevent public defenders from dedicating as much time or as many resources as they may want for each case. Public defenders operate under heavy caseloads and often have little time to prepare before appearing before the judge. This situation is contrasted to that of a “private attorney,” who is paid directly by defendants or family members and therefore has a smaller caseload and more incentives to advocate for their clients.

Almost all interviewees also expressed distrust in their public defense representation because of their perception of collusion and camaraderie between public defenders, prosecutors, and other court officials. Evidence from ethnographic observation suggests that public defenders, prosecutors and judges do have friendly relationships with each other, often talking informally and moving to stand by each other before and after court is in session. While such interactions may not be visible to defendants, many interviewees emphasized that public defenders are paid by the same source as prosecutors, and that public defenders have few incentives to win their cases. When asked why he could not “do” a public defender, one defendant noted:

“You can say they get paid off even if they win the case or not, but really that ain't how that go. Really? Them people get their money off a conviction. So bootcamp, prison time, probation. That's how they get they money. PD, and state attorney. So they're going to work with each other just to get that money.”

This interviewee expressed a severe lack of faith in public defenders because of their inherent place within the system. Like the “state attorney,” the public defender, or “PD,” gets paid regardless of the case outcome. Furthermore, this defendant believed that public defenders’ financial incentives actually lay with “conviction,” since the state gets more money for

incarcerating and surveilling each defendant who is in prison or on probation. It is ultimately the perception that the public defender and the prosecutor are “going to work with each other” that underlines most interviewees’ mistrust in the quality of their representation.

Defendants’ perceptions toward representation by public defenders has important implications for their belief in justice and fairness within the pretrial and bond system. One defendant summarized his perception of his public defender:

“Like he should be fighting for me... But if I don't have nothing, you know, have a backbone on, which is supposed to be my public defender, how can I win? I'm set up to lose. That's why... they call them penitentiary deliverers because nine times out of ten we have a public defender, you end up going to jail.”

This interviewee characterized the ideal public defender as his “backbone,” without which he is “set up to lose.” While he understood the “supposed” purpose of a public defender, this defendant explained a frequent joke that many interviewees repeated. Instead of public defender, PD stood for “penitentiary deliverers.” This common refrain amongst defendants suggests that mistrust in public defenders is widespread and deeply rooted in personal and collective experience. Without a reevaluation of the resources and role that public defenders have in the courtroom, the pretrial system has little chance of enacting justice and reform for defendants.

Effects of Pretrial Incarceration on Defendants, Families and Communities

When a judge orders a high D-bond or no bond, these bond determinations often signify that defendants will spend months if not years in Cook County Jail waiting for their cases to go to trial or until they plead guilty. Most defendants that were interviewed for this project had spent some length of time in Cook County Jail before they were able to post bond. The length of time in which interviewed defendants were incarcerated for their most recent case ranged from a few weeks to 8 months. Other interviewed defendants were also detained on house arrest.

Incarcerated: Lost Time and Barriers to Advocacy

A decision about bond has important consequences for a defendant's prospects in fighting a case. In theory, more serious cases are the ones where the defendant is incarcerated pretrial. The plea system, however, creates a structure of incentives in which defendants may plead guilty even if they believe they are innocent to avoid spending more time in jail. Somewhat paradoxically, defendants noted that those who believed most strongly in their innocence and ability to win their case were the ones who stayed the longest in jail. One defendant explained:

“You’re going be in there for a good year, off the bat, just to fight your case. But the maximum... is like two to three years. So imagine. You sitting down two or three years... But you ain't got to wait it out though. You can cop out. That's the... only reason you would wait it out, because you know you could beat it.”

Using this defendant's word choice, people who believe they can “beat” their case “wait it out,” but many people may choose to “cop out” and plead guilty to get out of jail. While this defendant appears to frown upon pleading guilty when one is actually innocent—a “cop out”—he also asks others to “imagine...sitting down two or three years” in order to prove your innocence. The length of time it takes for a case to go to trial, which for some people in Cook County can take years, seems inherently at odds with a defendant's constitutional right to a fair and speedy trial.

If a bond hearing results in pretrial detention, a defendant's ability to advocate for themselves both to and through their public defender is also compromised. One defendant argued that his public defender treated him with much more respect after he was released on bond:

“[What] people don't understand is that you have a public defender and you have them jail bonds, then you get treated totally different. It's not the same respect as they'll see you if you was in person. But you have that jail suit on, it's like no respect.”

This interviewee argues that “jail bonds,” or D-bonds or “no bonds” that result in pretrial incarceration for extended periods of time, lead public defenders to treat defendants differently, often with less respect or attention. Instead of being able to come into the office to talk to their

public defender, incarcerated defendants are left in the dark about their cases. One defendant described this sense of powerlessness:

“The public defender is not going to come to the deck or anything like that to see you... inmates don't have too much interaction with their public defender so they can be aware of what's going on. Every time you come into the courtroom it's like you finding out stuff that day.”

As this interviewee articulates, incarcerated defendants have much less contact with their public defenders. An incarcerated defendant is often not aware of new developments in their case until their next hearing when they are “finding out stuff that day.” Since defendants are rendered immobile and public defenders are dealing with large caseloads, there are no regular visits between defendants and their public defenders. This lack of contact therefore illuminates another level of inequality built into the pretrial system. Once an unaffordable bond amount is ordered, defendants face months without the full ability to advocate for themselves. In a system where “pressure” matters to achieve results, this reality means that incarcerated defendants are “set up to lose” and are presumed guilty without much hope of being proved innocent.

Electronic Monitoring: Strain on Families and Communities

The experiences of people who have been detained in their homes on electronic monitoring demonstrate that they must confront many of the same constraints on employment and family obligations that people incarcerated at Cook County Jail face. For example, one defendant described his current experience of being on electronic monitoring (EM):

“I lost the job because I'm on house arrest. I can't get no movement. I mean what else can I do, you know? They know I got bills to pay. Can't even pay them now. I can't even go to the unemployment office... I walk this floor all day, every day, going nowhere.”

As this interviewee articulates, electronic monitoring severely constrains the ability of defendants to provide for themselves and their families. This defendant lost his job while incarcerated at Cook County Jail, but upon release the condition of house arrest made him unable

to look for a job or pay his bills. In describing how he walks the floor of his two-room house “all, day, every day, going nowhere,” this interviewee also articulates the sense of powerlessness and frustration that other defendants echoed from their experiences on electronic monitoring.

Furthermore, family and friends of defendants are disproportionately impacted by an order of electronic monitoring, especially if the EM order is in addition to a monetary bond. One defendant described his attempts in advocating for a lower bond that resulted in EM:

“I let them know how this was impacting... my wife, she's gonna be evicted, due to me being here, the person with the income, they still didn't care. They're like okay, we'll give you house arrest, you can bond out but still house arrest. How am I going to support my family on house arrest? So that was my option. \$10,000 with house arrest.”

This interviewee described how electronic monitoring not only affected his livelihood, but the well-being of his family members who had to try to pay both the monetary bond of \$10,000 and adjust family finances without his income source. This defendant's experience reveals the significant consequences that a judge's order of both a D-bond and EM can have on defendants and families. Even after his wife was able to work with the Chicago Community Bond Fund to pay his bond, this defendant had to remain on house arrest without a way to “support my family.” Interviewees noted that being on EM is preferred to incarceration in jail, but often felt like a double standard after often already paying a monetary bond. Interviews indicated that house arrest places a burden on families and friends, where communities and networks of support pay for a defendant's alleged crime before the defendants themselves are even convicted or sentenced.

Discussion

Ethnographic observation and defendant interviews revealed several interlocking themes of analysis that may be overlooked if policymakers focus only on quantitative data on General Order 18.8A. While statistics on changes in bond types and fluctuations in the jail population may help answer whether General Order 18.8A has been “effective” or “successful” in its aims, my study sought to answer a different question—*how* the policy is implemented by court officials and how that implementation reflects a disconnect between existing reforms and defendants’ perceptions of what justice and change should look like within bond court. Based on my data collection, I argue that widespread discretion combined with individual bias and preferences on behalf of court officials has resulted in an inconsistent implementation of General Order 18.8A. Defendants and family members who appear in Cook County Central Bond Court are subject to overlapping spheres of discretion, exposed to the decision-making and moral evaluation of judges, court officers, prosecutors and public defenders.

My observation of the uneven implementation of General Order 18.8A and the interactions between court officials, defendants and family members exposed the assumptions of guilt that are built into a pretrial system where defendants are supposedly “presumed innocent.” My observations suggest that defendants, and by association the family and friends who come to court to support them, are in many ways presumed guilty the moment they enter the courtroom. This judgment of guilt and wrongdoing is interwoven into the courtroom norms and the reform efforts that supposedly sought to reconfigure the operation of bond court. While the use of the PSA tool in bond court was mandated in General Order 18.8A as a mechanism to standardize pretrial condition recommendations and reduce bias in bond determinations, the tool’s reliance on past outcomes and criminal history to assess risk perpetuates its own form of inequality and

criminal judgment. Furthermore, judges' often irregular adherence to the PSA recommendation and their employment of moral authority rhetoric reveal how both formal and informal mechanisms of judgment and punishment combine within the pretrial courtroom.

This procedural and moral evaluation of guilt is not only confined to the judges' statements and bond determinations, but is also perpetuated by other court actors, such as court officials. While family presence in the courtroom can provide a source of advocacy and support for some defendants, this resource advantages some defendants while remaining unavailable to others. When ability-to-pay determinations rest on the expediency of case managers and the presence of a support system that has significant financial resources, General Order 18.8A does not inherently reduce racial and socioeconomic inequality in the courtroom. A defendant may be labeled as "violent" and "no stranger to the criminal justice system" as justification for pretrial incarceration in the same hour that a family's small financial resources may be labeled "insufficient" for a loved one's release.

Although one's bond hearing lasts only a few minutes, the bond determination has lasting consequences for defendants, family members, and the communities in which they live. In mandating that a person be monitored, confined, or incarcerated prior to conviction, the discretionary policies and procedures within Cook County Central Bond Court—and the front-line workers who implement them—have a significant influence in a person's case and in the future of these defendants' lives. My data suggests that bond court is one juncture in a larger system of injustice, mistrust, and marginalization that perpetuates inequality for people of color, poor people, those in single female-led households and people who are labeled "criminals." In investigating the implementation of General Order 18.8A, my study therefore argues for vigilant assessment of how reform policies contribute to, or disrupt, the larger institutional status quo.

Policy Recommendations

In this section, I recommend improvements to bond court proceedings in Cook County Central Bond Court. These recommendations include the provision of clear written and verbal information about bond determinations and more resources dedicated to defense. I also argue for stronger enforcement mechanisms to implement General Order 18.8A. More specifically, I recommend data collection on judge-specific bond and detention rates and a narrower use of EM.

Bond Court Procedures

First, there are improvements that can be made to the bond hearing procedures currently in place at Cook County Central Bond Court. Although court officials spend each morning preparing the cases, the rapid-fire nature of court hearings places both defendants and their loved ones at a disadvantage because bond orders are often given without attention to mitigating factors and without clear communication to defendants and observers what the order is. Case managers sometimes pass out informational sheets before court starts and case-specific bond slips for family members after a defendant's hearing. The implementation of these procedures is inconsistent, however, across different days and court actors. To ensure an equitable hearing, I recommend that both defendants and their loved ones be consistently provided with a verbal and written summary about the verdict of the hearing and what the next steps in the bond process are.

Public Defender Resources and Incentives

Second, I recommend that more time and resources be dedicated to the defense of each new defendant case that appears before a judge in Central Bond Court. While I observed bond hearings to last an average of a few minutes, the time dedicated to defense was often only 30 seconds. I further recommend that public defenders be mandated to meet with each incarcerated

defendant they represent prior to each substantive court date. To complement this policy, I also recommend that more resources and funding be dedicated to Cook County Public Defender Services to ensure that defense attorneys can successfully represent each client in their caseload. This policy recommendation is necessary to strengthen defendants' trust in their public defenders and to reduce potential disparities in case outcomes between pretrial release defendants and incarcerated defendants. One interviewee described this ideal policy situation:

“They should have some type of set time where they can go and meet inmates and be like, “Hey, hi. How are you doing? This is what's going on this week... You should be prepping for this week.” Or... “we need to work on this or I need more information from you on this or get your parents to do that.” Like it needs to be that type of reciprocation.”

As this defendant described, public defenders should be required to meet with the incarcerated defendants they represent prior to an upcoming court date to inform them about the case status and any work they should complete before court. A standardized “set time” to have meetings between public defenders and incarcerated defendants would allow both to prepare ahead of court. Although the Cook County Public Defender's Office would require additional financial and administrative resources to implement this policy, these costs would be outweighed by this recommendation's benefits of robust representation for defendants incarcerated pretrial, more efficient and substantial hearings, and improved trust between defendants and their lawyers.

Judge-Specific Data on Bond and Detention Rates

To reduce discrepancies across different judges and days, stronger enforcement mechanisms must exist for the implementation of General Order 18.8A. Although the Chief Judge issued General Order 18.8A, this policy is implemented by numerous court actors, including a panel of pretrial judges who I observed to interpret and carry out the order in significantly different ways.

One way to encourage judges to adhere to General Order 18.8A is to expand the data collection initiative of the Chief Judge to include judge-specific information on bond orders and detention rates. While not forcing judges to comply with the order, this recommendation would make discrepancies in implementation across judges visible to both the public and the judges themselves. By collecting and publishing information on judge-specific breakdowns of bond types and different pretrial release conditions, different judges would be able to evaluate their performance in comparison to their peers. This data initiative should also include information on whether judges' monetary bond orders led to pretrial incarceration of defendants after a two-week period. This data would provide evidence on whether follow up hearings within a week do or do not lead to more reasonable bonds and would reveal what percentage of defendants are incarcerated because of an inability to pay a monetary bond in the long term.

Narrow Use of Electronic Monitoring

Lastly, I recommend that the policy of ordering electronic monitoring (EM) be discouraged and only used as a strict alternative to an unaffordable monetary bond. With public awareness of inadequate living conditions in Cook County Jail, some may view EM as a humane and cost-effective alternative to a detention center. However, I observed EM being ordered without a PSA recommendation, as judges often ordered both a monetary bond and EM together. The prevalence of such a double standard for release is concerning because the stated purpose of a monetary bond is to ensure compliance with conditions of pretrial release, including attending court dates. If a family pays the monetary bond, the defendant is still incarcerated, within their own home, for months before the next court date. Instead of ordering EM in conjunction with monetary bonds, judges should be encouraged to release defendants on I-bonds and only order EM as an alternative to an unaffordable D-bond that would incarcerate the defendant pretrial.

Conclusion

In conclusion, I argue that reform efforts such as General Order 18.8A will fail to be successfully implemented without a broader re-conceptualization of what justice, reform and guilt look like within the pretrial system and for Cook County residents more generally. Pretrial bail and detention reforms in Cook County are necessary because the negative consequences of the pretrial system lead to disenfranchisement of defendants, families and communities within the city of Chicago. To truly achieve change and reform within the pretrial system, Cook County residents and court actors must interrogate assumptions of criminality built into labels of “violent,” “felon,” and “criminal.” The city of Chicago must also confront the overlapping forms of inequality that defendants and family members in Cook County Central Bond Court face.

While many discussions about race, poverty, and the criminal justice system center on policing, drug charges and prison sentencing, I argue that a conversation about pretrial system reform both necessitates and enables a re-conceptualization of what justice looks like within our criminal justice system. In this thesis, I have analyzed the implementation of General Order 18.8A, court official interactions, and the perceptions of defendants who have experienced bond court and the larger pretrial system in Cook County. While this analysis has focused on one courtroom and one moment in a larger policy and institutional system, I suggest that the conclusions from this analysis extend beyond Central Bond Court at 26th and California to reflect how policies create and reproduce racial and socioeconomic inequality in the city of Chicago. In highlighting defendants’ perspectives—whether of marginalization and stigmatization, injustice and frustration, hopelessness or optimism—I urge future policy reform efforts to center the experiences of the most marginalized groups affected by these pretrial policies and the criminal justice system more generally.

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Appendix A: Interview Guide for Defendants, Family Members, and Observers

- Bond Court Experience and Logistical Information
 - Let's start with you describing when you experienced Central Bond Court and what you witnessed and how you participated in its proceedings.
 - When did you attend Central Bond Court? How many times? For each of the times you experienced bond court, could you identify whether you were a defendant or a public observer, including a family member or friend of a defendant?
- Experiences of Defendants in Central Bond Court
 - What type of information was provided to you beforehand about your bond hearing?
 - What did you understand or not understand about your bond hearing as it took place?
 - How long did the hearing last? What happened before and after the hearing?
 - Can you recall if bond was set? If so, do you remember which type of bond was ordered, and if monetary, in what amount? Were you able to pay the bond, if it was monetary? Did a family member provide the bond amount or pay the bond for you?
 - Were you incarcerated or detained before or after this bond hearing? For how long?
 - Can you describe any aspects of your experience in bond court that were not visible to the public in the courtroom?
 - If you have appeared in bond court multiple times, did you observe any changes in proceedings over time?
 - Have you observed, heard about, or participated in any advocacy or activism efforts related to changes in bond court proceedings? If so, do you have any perceptions or opinions about these efforts?
- Experiences of Family Members or Friends in Central Bond Court
 - Can you describe your relationship with the defendant you attended the hearing for?
 - What did you understand or not understand about the bond hearing as it took place?
 - Can you recall if bond was set? If so, do you remember which type of bond was ordered, and if monetary, in what amount? Were you or the defendant able to pay the bond, if it was monetary?

- Can you walk me through the process of paying bond? Who did you interact with when you posted bond? How long after you paid the bond amount was your family member or friend released? What types of fees were associated with paying the bond?
- Experiences of Observers in Central Bond Court
 - What did you understand or not understand about the bond hearings as they took place? How do you understand the process of bond hearings?
 - Who did you interact with? How long or how frequently did you observe bond court?
- Interaction with Court Officials
 - Let's move on to your interactions with court officials in the courtroom.
 - In the times you attended bond court, did you interact with court officials, such as judges, lawyers, clerks, and officers? If so, which court officials did you interact with? If so, how would you describe these interactions?
- Interaction with Court Observers, Family Members, and Defendants
 - Can you describe what interaction, if any, you have or had with defendants or members of the public in the courtroom, including family members?
 - If you were a defendant, have you ever observed or communicated with members of the public in the courtroom? If you were a family member or friend, did you interact with or communicate with any defendants or members of the public in the courtroom? If you were a court observer, what general interactions did you observe between defendants and members of the public in the courtroom?
- Perceptions of Bond Court and Reforms
 - Lastly, I am interested in your perceptions of, or your opinions about, bond court more generally, and what you think change, reform or justice might look like.
 - Did you listen to or participate in the actual bond court hearings themselves? What is your understanding of bond court hearings in general?
 - What would change look like to you? What would justice or reform within bond court or the pretrial system look like to you?