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“Bond is going to be...”: Setting and
justifying pretrial conditions in Cook
County Central Bond Court

By

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Introduction

On a Saturday in Central Bond Court, Judge Simmons¹ ruled, “You can post your bond, you need \$9,000 to be released from custody.” After hearing the ruling, the defendant, Mr. Benson, asked for clarification; “So, I pay for this, or I won’t be able to get out [of jail]?” Judge Simmons confirmed, someone must pay the court \$9,000 on behalf of Mr. Benson before he is released. Her decision was based on the prosecutor reading a police arrest report narrative of a traffic stop, searching the car and finding a gun, and Mr. Benson’s arrests for drug possession then gun possession in the early 2000s. The public defender responded with information from a brief interview of Mr. Benson, sharing he worked at a custom design business and had \$800 available to pay for release from jail. After the ruling, the prosecutor, sitting at a desk in bond court, was looking through the next arrest report to summarize while the public defender prepared their next response. Mr. Benson stood up from his seat and receded into the background of the zoom box on the courtroom television, walking into a different room of Cook County Jail.

The interaction between judge, prosecutor, and defense attorney to process cases has been theorized as a courtroom working group. Working group theory recognizes that courtroom officials have different roles and objectives but share a workplace, developing routines for processing cases and presenting information (Eisenstein and Jacob 1977; Feeley 1979). Cook County Central Bond Court, where this study takes place, amplifies the shared pressures of courtroom officials because it processes a high volume of cases and the cases have consistent structures, encourage routines to develop. Courtroom official’s relying on routines to share information is heightened by consistent personnel changes and physical separation as court takes place over a Zoom video call.

¹ All names are pseudonyms.

Central Bond Court is about to be disrupted as a central tool used in the majority of cases, money bail, is abolished when *Pretrial Fairness Act* takes effect eight months after the conclusion of my fieldwork. Working group literature has developed through reproducibility as scholars deepen previous observations by bringing new methods and nuanced theoretical insights to foundational work (Eisenstein and Jacob 1977; Feeley 1979; Gonzalez Van Cleve 2016; Kohler-Hausmann 2018). With the impending disruption to bond court, this paper records the working group function before money bail is eliminated and creates an opportunity for future researchers to study the impact of legal disruption for courtroom working groups and develop our understanding of the relationship between state legislative change and local implementation of reform.

The workplace structure and impending disruption at Central Bond Court prompt the question, how do court officials set and justify pretrial conditions? Conducting an ethnography of Central Bond Court, I found court officials follows a consistent routine to communicate information and justify pretrial conditions. Judges use setting pretrial conditions to publicly justify their decision and communicate to court officials the information and logics that are most persuasive. I find the logic of “performance” structures bond court with pretrial conditions escalating in seriousness based on the extent of a defendant’s past legal system interactions. Identifying how court officials set and justify pretrial conditions today nuances our understanding of courtroom working groups.

Literature review

Theorizing the courtroom working group

Judges, prosecutors, and defense attorneys interacting create a courtroom working group. Because courtroom officials share a workplace and have interdependent workloads, they develop shared workplace pressures (Eisenstein and Jacob 1977; Feeley 1979; Kohler-Hausmann 2018).

Courtroom officials can use consistent interaction to exert pressure on other working group members (Eisenstein and Jacob 1977). For example, if a defense attorney creates additional work by filing extensive motions, the prosecutor may retaliate by refusing to reduce charges (Gonzalez Van Cleve 2016). Researchers test working group theory through courtroom ethnographies, often supplementing observation by interviewing courtroom officials and compiling descriptive statistics for overall caseloads (Eisenstein and Jacob 1977; Feeley 1979; Gonzalez Van Cleve 2016; Kohler-Hausmann 2018). Working group theory is a tool for understanding how court officials with opposed formal goals respond to shared workplace pressures.

Judges are responsible for structuring case proceedings in the courtroom that working group members share. Judges administrate cases as they progress through the system before resolving in dismissal, guilty plea, trial, or another resolution. At the first court hearing of a case, the Judge sets pretrial conditions, legally binding requirements that the defendant must follow while their case is being resolved (Feeley 1979). Judges set the calendar so that a case progresses. They also decide any formal hearing, like a motion arguing there was an illegal search, and go through the procedural justice requirements when defendants plead guilty. Judges are formally responsible for ruling on questions of law and setting pretrial conditions, but exercise further influence by controlling the courtroom proceedings and calendar.

Prosecutor's formal role is to accuse a defendant and then establish their guilt. Prosecutors decide if a criminal case will exist by bringing charges (Sklansky 2018). Charging cases, prosecutors exercise broad discretion because one act can be charged in many ways (Stuntz 2004). As prosecutors charge cases, they fulfill a professional role, working in an office with its own culture, hierarchy, and pressures (Gonzalez Van Cleve 2016). After charging a case, prosecutors are responsible for establishing the defendant is guilty. As the case progresses, prosecutors

influence proceedings by speaking in open court. Their greater source of influence, however, is using their discretionary charging power to encourage plea bargains. For example, prosecutors can charge a case but offer a plea bargain to reduced charges, pressuring the defendant to accept guaranteed outcome rather than risk a more serious punishment if the defendant is found guilty at trial (Stuntz 2004; Subramanian et al. 2020). In the United States, more than nine of ten felony cases that reach a finding of guilt or innocence are concluded through a plea bargain (Subramanian et al. 2020). Prosecutors exercise influence by speaking in court hearings, but their most significant source of power is discretion in how to charge a case.

Defense attorney's formal role is to work for the defendant's most favorable case outcome. In a trial setting, the defense attorney's goal is to win the case by creating reasonable doubt. Given cases rarely reach trial, defense attorney's nebulous task is to secure the best outcome for their client (Emmelman 2019). Defense attorneys have tools from procedural justice at their disposal that can weaken prosecutor's case and improve the defendant's outcome. For example, a motion arguing evidence was illegally discovered can lead to evidence being dismissed, leaving prosecutors without key facts to prove a case. Procedural justice is limited by costs the working group may impose on defense attorneys who invoke procedural justice protections (Feeley 1979). Procedural justice proceedings create additional work for everyone in the working group through hearings and written arguments (Feeley 1979; Gonzalez Van Cleve 2016). Other courtroom officials can retaliate. For example, prosecutors could retract a plea deal from the defense attorney's client (Gonzalez Van Cleve 2016). Defense attorney's role is to pursue the best resolution for the defendant but that role, and procedural justice tools at the defense attorney's disposal, can be constrained by pressure from other courtroom officials.

Justifying pretrial conditions

Court officials justifying pretrial conditions present a unique place to study justifications for carceral control because the person under carceral control, the defendant, has not been convicted of a crime. The legal justifications for pretrial conditions adopt different justifications for controlling a defendant. Classic justifications for punishing people hinge on proving the defendant's guilt for a *past* action and assigning an outcome based on *guilt* (Feeley and Simon 1992). Court officials justifying pretrial conditions cannot rely on the logic of guilt for past actions because the defendant has not been convicted, the defendant is presumed innocent. Historically, pretrial conditions were legally justified as incentives for the defendant to appear at future court dates (Page and Scott-Hayward 2022). Justifying pretrial conditions based on future appearance relies on predicting and controlling a defendant's future behavior, but the underlying reason for guaranteeing future court appearance is rooted in possible guilt for a past crime. Justifying pretrial conditions based on court appearance is rooted in possible guilt for *past* conduct.

Court officials justify pretrial conditions through "performance" logic by escalating the severity of conditions based on defendant's past interaction with the legal system. Issa Kohler-Hausman defines performance as a set of techniques where court officials evaluate how the defendant performs a task, escalating punishment when the task is not performed (Kohler-Hausmann 2018, 221). Evaluating performance requires that the defendant is situated in a "network of writings" that can inform the court of defendant's tasks (Foucault 1978; Kohler-Hausmann 2018). For example, Kohler-Hausman observed judges requiring community service as a task, then evaluating performance at a later court date based on signed time sheets. With performance, the justification for controlling the defendant without a conviction is the need for the court to determine defendants are able to perform, complying with court conditions (Kohler-Hausmann 2018).

Performance justifications for pretrial conditions rely compliance with court conditions independent of the alleged law violation.

Court officials justifying pretrial conditions based on predicting defendant's future conduct can adopt the logic of "dangerousness." In 1987, the United States Supreme Court added preventing predicted future crimes to the list of legal justifications for jailing people pretrial, ruling that preventing danger to the community is a legitimate justification for pretrial conditions including pretrial jailing (*United States v. Salerno* 1987). Justifying pretrial conditions based on dangerousness is based on preventing *future* conduct. The broad concept of dangerousness empowers prosecutors by adding symbolic weight to their argument by creating new stakes: pretrial conditions to prevent future danger and make the public safer (Page and Scott-Hayward 2022). A tight association has been constructed between dangerousness and blackness in the United States through the structure of information and rhetoric about crime and criminality since at least the 1890s, as historian Khalil Gibran Muhammad has demonstrated (2010). Justifying pretrial conditions based on "dangerousness" relies on predicting future as a basis for carceral control.

Here, it is crucial to note justifications for pretrial conditions do not necessarily reflect the actual impact of those conditions and studies of pretrial conditions, particularly pretrial jailing, suggest pretrial conditions can be counterproductive. Studies of pretrial jailing raise public safety concerns. Pretrial jailing has been linked to increased recidivism two years after initial arrest in two randomized studies of defendant pretrial conditions, with a third study finding no significant effect (Gupta, Hansman, and Frenchman 2016; Leslie and Pope 2017; Dobbie, Goldin, and Yang 2018). Money bail raises significant procedural justice concerns because it has been strongly linked to higher rates of guilty pleas in randomized studies (Lum, Ma, and Baiocchi 2017; Stevenson 2018; Gupta, Hansman, and Frenchman 2016; Dobbie, Goldin, and Yang 2018). While the historic

purpose of bail is to incentivize appearance at court, evidence is mixed that money bail impacts appearance while alternatives such as text notifications show strong results (Ferri 2022; Fishbane, Ouss, and Shah 2020; Page and Scott-Hayward 2022). Thus, while legal justifications for pretrial conditions cite incentivizing on court appearance and creating public safety, research suggests current pretrial jailing practices are counterproductive to these goals.

Reproducing work to study change over time

Evolving justifications for pretrial conditions are one small storyline in a defining drama of the modern legal system: the emergence of mass incarceration. Courtroom working groups in the United States today operate in the era of mass incarceration. Mass incarceration is characterized by the mass expansion of people under legal system supervision, including pretrial, prison, parole, and diversion control (Garland 2001; Wacquant 2001; Alexander 2012). Mass incarceration is also racialized, disproportionately impacting black² and Latinx communities and disproportionately criminalizing poor people (Wacquant 2001; Alexander 2012; The Sentencing Project 2021). Among many factors, this mass incarceration was supported by increasingly punitive sentencing laws, criminalization in a “war on drugs,” and the advent of “broken windows policing” intentionally expanding charging for misdemeanor acts (Alexander 2012; Hinton 2016; Kohler-Hausmann 2018). The mass incarceration legal system reaches beyond time incarcerated in prison. Mass incarceration impacts people who never have a criminal case through hyper-policing and surveillance and effects people who have served time in prison long after they are released through long-term supervision and targeted regulations (Alexander 2012; Miller 2021; Pager 2007; Rios 2012). To highlight the legal system’s broad impact I will interchangeably refer to the “legal

² I will use lower-case capitalization for racial categories, mirroring the convention in most socio-legal literature. I find it is most important that the capitalization of “black” and “white” is the same, highlighting both as socially constructed categories of identity (Ewing 2020).

system” and “carceral state” (Beckett 2018; Thompson 2010). The sheer number of people under carceral control has expanded since the 1970s, rising from one million people in the 1970s to approximately six million people in 2018 (The Sentencing Project 2021). As this new era emerged, new legal justifications for pretrial conditions emerged and a literature trying to make sense of the courtroom level of this carceral system evolved.

Working group theory was articulated before mass incarceration and has remained relevant through the era of mass incarceration in part due to scholars reproducing and nuancing previous work. For example, Nicole Gonzalez Van Cleve reproduced previous studies on courtroom function by reproducing courtroom ethnographies and adding a methodological innovation: micro-sociological analysis of racialized interactions (Gonzalez Van Cleve 2016). With these methods, Gonzalez Van Cleve connected individual and cultural racist practices to working group structure, ultimately proving the racialized structure of Cook County felony court. Reproducing previous work, while adding a methodological innovation, Gonzalez Van Cleve contributed an analysis of systemic racism to working group theory.

The era of mass incarceration presents another set of unaddressed research questions for working group theory; when legal change restructure courtrooms, how do working groups adapt? Working group theory has remained robust through *overall* changes in the system, but engagement with the impact of *particular* changes on *individual* working groups is limited. This gap is partially due to the limitation that researchers do not have time to remain deeply imbedded in a field site waiting for disruptions to occur. Malcolm Feeley highlighted this limitation in his preface to the second edition of *The Process is the Punishment*. After revisiting his original field site, he recounts observing structural changes but choosing not to study them and revise the book because “[e]mphasizing recent changes in the court might unwittingly undermine concern with the generic,

underlying processes and relationships, which constitute the central focus of this book” (Feeley 1992, xxi). Feeley chose to follow most working group analysis which “takes the social structure—the environment—more or less as given” (Feeley 1992, xxvi). To study how process and relationships are shaped by change, researchers could make a different choice, analyzing a field site before and after a major disruption to the working group. The after analysis could even be by a different research reproducing previous work before the disruption (Desmond 2014; Reyes 2018). Studying a site before and after a major disruption to understand the impact of reform in courtroom working groups is another place that working group theory could contribute to our understanding of the legal system.

Methods

I selected Cook County Central Bond Court as my research site because I could observe a high volume of cases where pretrial conditions are set and justified by court officials. Central Bond Court manages a high volume of cases, processing most felony cases for Chicago, the country’s third largest city, and some cases from nearby suburbs. Central Bond Court processes one case type, the first court hearing for felony cases where pretrial conditions are set. My research question is also motivated by creating a record of the Central Bond Court working group before a major disruption. Eight months after the conclusion of my observations a core pretrial condition, money bail, will be abolished, disrupting the working group (Illinois Public Act 101-652). Creating a record of the conditions set and justifications stated before bail is abolished make it possible for future researchers to identify the impact of a structural disruption on the Central Bond Court working group.

Data

I collected data over five months observing Central Bond Court, concluding observations when I was familiar with court official's routines and no longer learning from additional cases. Observing Central Bond Court, I focus on individual cases as the unit of analysis to understand how pretrial conditions are set and justified. Identifying how pretrial conditions are set and justified in general required identifying routines in the working group and distinguishing outlying cases. Analyzing individual cases as my unit of analysis, I identified themes that emerge across multiple cases (Deterding and Waters 2021; Small 2011). I began observations in January of 2022, watching court five days a week and gradually tapering to weekly observation by May of 2022. I adopted the logic of "saturation" proposed by sociologist Mario Luis Small to determine how many cases I needed to observe, concluding data collection just after 500 cases when new cases were consistently predictable (Small 2011). To document the cases I observed, I wrote field notes, typed case transcripts, and collected descriptive data on relevant case features. Taking individual cases as my unit of analysis, I identify themes that emerge in how pretrial conditions are set and justified.

I observed Central Bond Court by listening to a YouTube live audio broadcast for consistent note-taking and access. Central Bond Court was conducted in a hybrid format during my observations with court officials appearing over Zoom video call. Listening remotely, I took detailed typed notes. Electronic devices are not allowed in the felony courthouse making in-person notes less detailed because my handwriting is slower than typing. While observing Central Bond Court, gun cases emerged as a salient and contested topic, so I typed transcriptions for over 100 gun cases to closely analyze court official's rhetoric. Finally, observing remotely was logistically simpler, saving two hours of transit time for each observation. Listening to Central Bond Court remotely enabled me to observe regularly and type detailed notes.

Observing court in person I could observe the physical and virtual structure of working group interactions. In person, I could observe the files and documents prosecutors use. I observed the layout of the bond court hallway and physical courtroom space. In court, I could also observe the Zoom video call which is played on a television in the courtroom. Observing the Zoom video call I learned who was logged in as a participant and saw defendants appearing remotely from Cook county Jail. Observing in-person, I identified physical and virtual structure of the working group.

My data is limited to the public bond court proceedings. My vantage point observing public court calls is as an outsider without access to the informal culture of any courtroom officials or reflections in an interview setting. This constrains my understanding of “justifications” is to publicly stated justifications (Jerolmack and Khan 2014). I am observing a performance as courtroom officials do their job observed by each other, the public, and anyone in the future who reads the record of proceedings which shapes my analysis as I view public justifications for decision making. Limiting my vantage point to one stage in the legal process also limits my ability to analyze race and racism. I observe the intense racial disparity in the legal system by identifying racial disparity in pretrial defendants. For example, as of this writing in July 2022 nearly three-quarters of people in Cook County Jail are black in a city that is less than one-third black overall (Cook County Sheriff 2022). Previous work on hyper-segregation and policing can speak to mechanisms driving this intense disparity (Olson et al. 2021; Rios 2012). Analyzing race in my data is limited to the identity of individuals in one-on-one interactions or close analysis of racially coded language. The structures before bond court generating racial disparity and informal justifications of court officials cannot be addressed through my data observing cases in Central Bond Court.

Analysis

For data analysis, I coded fieldnotes and transcripts using a flexible coding method. First, I conducted “index coding” to anchor transcripts and fieldnotes to the court procedure and sort cases by the most serious charge (Deterding and Waters 2021). Second, I developed analytic codes to trace themes in the data (Deterding and Waters 2021). Many analytic codes developed directly into sections of the findings.

I also collected descriptive statistics for cases I observed remotely to compliment qualitative data collection and confirm which case types and outcomes were routine. I adopt a complimentary mixed-methods approach, using descriptive statistics to measure pretrial conditions set in bond court at the case level, the same phenomenon measured by qualitative data (Small 2011). I could test my intuition of what cases are routine using the descriptive statistics by checking how the charges and outcomes compare to other cases. For example, when discussing “high” money bail I can define “high” in relation to all money bail judges set on cases I observed, set by that judge in comparison to other judges, set on cases with the same charge, or any other axis of analysis. Further, descriptive data highlights how cases with unusual outcomes contrast with routine cases and made identifying outliers easier. Sharing descriptive data also reinforces transparency, giving readers the ability to check assess my claims about which pretrial conditions are routine (Reyes 2018).³ Collecting descriptive statistics on the cases I observed supported analysis of what case outcomes are routine and compare individual cases compared to grouped case sets.

³ Descriptive data files and analysis code are accessible at https://github.com/MicahCM/bond_court

Findings and Discussion

Central Bond Court working group

The bond court working group is made up of multiple actors filling three roles for each case: judge, prosecutor, and defense attorney. Central Bond Court is defined by professional roles rather than individuals because the people working in bond court consistently change. There are seven judges assigned to the pretrial division who rotate presiding over bond court. Assistant State's Attorney (ASA) Alexander⁴ is a supervisor, in court every weekday, but the two supporting ASAs and weekend ASAs frequently change. Assistant Public Defender (APD) Hodgkin is assigned to bond court, representing defendants most weekdays, but the weekend APDs are constantly changing. The changing individuals mean that working group roles remain stable while the individuals filling those roles consistently change.

The hybrid format of bond court reinforces formal roles over informal interactions. Bond court takes place over a Zoom video call. Most judges preside in person, but on occasion the judge presides over zoom. The judge and prosecutor work from the same courtroom, but they are separated by a large, raised platform elevating the judges and two layers of plexiglass insulating each workspace to prevent the spread of COVID-19. The separation is so complete that judge and ASA demonstrate they are paying attention during proceedings by looking down at their computer screens to make eye contact through the video call. Public defenders are completely removed from the courtroom, appearing remotely over zoom. The physical separation of court actors as individuals reinforces their interaction through formal roles.

⁴ In Cook County, prosecutors are referred to as "assistant state's attorneys" or ASAs.

In Central Bond Court, pretrial conditions are set by the judge after they listen to the prosecutor and defense attorney's arguments. The courtroom officials follow standard scripts. The prosecutor's script briefly recounts the police narrative of what occurred and shares excerpts from the defendant's LEADS report⁵ documenting past interaction with the legal system. Next, the defense attorney's script recounts defendant's age, family connections, work responsibilities, and financial ability to pay money bail based on a brief interview with defendants. By organizing information into scripts, prosecutor and defense attorneys make case information routine. Following scripts means that the individual prosecutor and defense attorney can change but the information they will share with the Judge is generally consistent. This consistency supports the court efficiently processing cases despite the consistent change in individuals fulfilling each role.

Structural role of court officials

Judges structure bond court by controlling the case order and progression of each case. Defendants appear in bond court over Zoom from a laptop at their location within Cook County Jail. Only one defendant appears at a time, walking through the door separating the waiting area from the zoom room after a sheriff calls their name. To limit confusion calling defendants, Judges explain the order of cases to everyone before court begins. Then, when a defendant appears, the Judge confirms their name and reads the charges. A few minutes pass while the prosecutor and defense attorney speak, then the Judge sets pretrial conditions. All pretrial release requires defendants appear at future court dates and avoid being arrested. These are the only conditions for

⁵ Courtroom officials refer to the LEADS report as a "criminal history report." I use LEADS report, the less common and more technical name, to highlight this document communicates documented interactions with the legal system. This is different from a person's "criminal history" or history of law violation. For example, someone's driving record is not a history of every time they went over the speed limit but every time they were pulled over for speeding. Similarly, a LEADS report records interaction with the legal system which is shaped by a defendant's likelihood of being stopped and searched by police concentrated in predominantly black or Latinx and low-income Chicago neighborhoods (Office of the Inspector General 2022).

an “I-Bond” release. The Judge can require money bail, where the defendant pays money to be released and, in most cases, after the case concludes, the money minus a 1% fee and court fees are returned to the defendant. The Judge can also set supervision conditions, ranging from phone call check-ins to home confinement with an electronic monitor. Finally, judges can incarcerate defendants in Cook County Jail while their case proceeds if a prosecutor first requests the defendant be jailed (*People v. Gil*, 2019 IL App (1st)). Judges structure the bond court proceedings and set pretrial conditions for each case that passes through bond court.

ASA’s structure bond court proceedings through case charging discretion and pretrial jailing requests. When someone is arrested in Chicago, police initially list a charge in the arrest report (Chicago Police Department 2022). After the arrest, most cases go to the State’s Attorney’s office for “felony review” where prosecutors formally set the charges or dismiss the case altogether (Cook County State’s Attorney 2022). Because many actions can be charged multiple ways, ASAs have discretion for how seriously to charge a case and, by extension, shape what they communicate to the bond court judge about the severity of case. Further, ASAs have the discretion to dismiss a case altogether, preventing it from ever reaching bond court. ASAs ability to dismiss cases is demonstrated during bond court during drug possession cases that are directly filed by police officers, bypassing felony review (Cook County State’s Attorney 2022). In bond court, ASAs dismiss almost one in five low-level drug cases. Low-level drug charges are dropped so frequently, Judge Esposito always asks, “State this is a class 4 PCS, are you proceeding?” before announcing low-level drug possession cases. ASAs also control the most extreme pretrial condition, pretrial jailing without money bail. In Illinois, prosecutors must request pretrial jailing before the Judge can decide to jail that defendant without money bail (*People v. Gil*, 2019 IL App (1st)). ASAs request pretrial jailing by writing a petition, prompting a hearing that takes place during bond court (725

ILCS 5/110-6.1(a), before amendment by P.A. 101-652). ASA's shape bond court by choosing how to charge cases and when to request pretrial jailing.

Defense attorneys do not significantly impact bond court structure, but they do serve as a mediator between defendants and the Judge. Defense attorneys work to prevent self-incrimination by telling defendants to stay silent. When a defendant tries to speak, the Judge immediately interrupts, and asks defense attorneys to "admonish" defendants. Defense attorneys then explain, "Anything you say can and will be used against you. Only speak about your case to your attorney or the attorney who is hired to represent you." Defendants sometimes express frustration at being silenced. For example, Mr. Tiggs was a defendant who kept insisting "I want to speak about the case." APD Hodgkin interrupted him and insisted "only speak about your case to your attorney or the attorney," but Mr. Tiggs protested, "I'm getting caged for something I don't know nothing about." Despite insisting he was innocent, Mr. Tiggs eventually took APD Hodgkin's advice, falling silent. Admonishing defendants, the defense attorney simultaneously prevents self-incrimination and closely aligns themselves with the court process. The alignment between defense attorneys and court process, rather than defendants, is highlighted when Judges mute defendants. Judges use defense attorneys to justify muting defendants on the Zoom video call. For example, Judge Simmons ignored a defendant by interrupting them and addressing APD Hodgkin, saying, "Hold on, let me mute him." By muting the defendant, Judge Simmons indicates the defendant is not a participant in the proceedings but an observer. Judge Simmons reinforces this message by addressing the defense attorney, referring to the defendant as "him." Admonishing defendants and being implicated in muting defendants highlights defense attorney's role as a mediator between the defendant and the Judge.

Network of writings

A limited network of writing generated by the police is available for court officials to know about the incident and defendant's history with legal system interaction. The prosecutor, judge, and defense attorneys rely on the arrest report to know about the alleged law violation. This gives the police epistemic authority to define what happened. There is not time for defense attorneys to challenge the police version of events by speaking to the defendant, independent investigation, reviewing body-worn camera video, or witness testimony that can be available later in the case. Police also control the network of writings about past conduct a defendant is situated within. The LEADS report recording past interaction with the legal system is the Judge's tool to examine the defendant's past conduct. The defendant's documented history is defined through police interaction. This network of writing reinforces institutionalized racism in the legal system because an individual's likelihood of interacting with the police is impacted by the concentration of police in low-income black and Latinx neighborhoods in Chicago and the over representation of black and Latinx people in police stops and searches (Office of the Inspector General 2022). Court officials rely on police version of the alleged event narrated in the arrest report and defendant's history recorded in a LEADS report, situating the defendant in a police-generated network of writing.

Prosecutors build their description of the incident on the police arrest report and share the defendant's history of legal system interaction. Observing in person, I could watch the prosecutors process case files. In most cases, the arrest report is stapled to the right side of the file with sections of the arrest narrative marked with a yellow highlight. To describe the allegation, the prosecutor reads the highlighted section. Then, to recount the defendant's past interaction with the legal system, the prosecutor would read from a LEADS report stapled to the left side of the folder. Prosecutors build knowledge about the case by relying on police arrest and LEADS reports.

Judges also rely on police information to understand the case, using the police narrative of events to justify their decision making and communicate to prosecutors the information they want to receive. For example, Judge Esposito communicates priorities to prosecutors by contrasting facts police report with prosecutor's characterization of police information. Judge Esposito explained, "Looking at inventory sheet, [there] could be as little as 10g in each bag and only 3 bags." Earlier, the prosecutor characterized this as the result of a "long term criminal narcotics investigation." Highlighting the weight of suspected drugs recovered while ignoring the police description of their investigation, Judge Esposito establishes her view this is a low-level case, justifying release with no conditions. Further, she highlights to prosecutors that suspected drug weight is relevant while police description of the investigation is not relevant. Judges rely on the police arrest report to understand the allegation and use highlighting facts from the arrest report during their ruling to justify pretrial conditions and signal priorities to prosecutors.

Defense attorneys are also dependent on police information. Defense attorneys working to critique the strength of prosecutor's evidence or attempt to destabilize the case, they rely on the information that prosecutors have shared or information in the police report. For example, public defenders often introduce a critique of evidence with, "As you heard from the state's proffer..." and then reframe the same facts in the interest of their client. This is a rhetorical strategy; it critiques the prosecutor's case by using their words against them. This is also a necessary tactic because defense attorneys do not have information about the case at this point. Arguing a pretrial jailing request, Assistant Public Defender Hodgkin had to depend on the arrest report and the state's argument, beginning, "At this time I would like to point out some of the facts that were in the state's proffer..." Here, APD Hodgkin is relying on the prosecutor's statement of facts based on the arrest report for information about the allegation and arguing by re-framing these facts because it is the

only information she has about the incident. In Central Bond Court, even defense attorneys must rely on the police arrest report version of the allegations.

Setting pretrial conditions

Judges setting money bail

Judges use bail in two ways: as a release condition and as a mechanism to jail the defendant. For low-level cases, Judges communicate pretrial release is the accepted outcome by setting no money bail or setting money bail at an affordable level. Judges can assume the defendant can pay money for their release when money bail is set at or below the amount the defense attorney has stated the defendant can pay. Affordable bail, money bail less than or equal to the stated ability to pay, is most common in low-level (class 4) felony cases. In low-level cases I observed, the pretrial condition as release without money bail in just under half of cases. In general, judges expected defendants with low-level charges to be released. For example, in one case the prosecutor stated the defendant, Mr. Murray, legally bought and carried a gun, but then his gun license was revoked, and at the time of arrest was carrying a gun despite losing his license. Judge Trent set money bail, explaining to Mr. Murray, “You need \$500 to be released from custody, alright?” Mr. Murray responded, “Alright not a problem” and Judge Trent replied, “Alright, I was hoping you’d say that.” By “hoping” that paying for release is not a problem, Judge Trent indicated that he assumes this defendant will be released promptly and will be able to pay this monetary bail. Judge Trent’s “hope” the defendant could buy release matches the overall release of initial gun possession cases and other low-level class four charges. Setting pretrial conditions of release or affordable money bail, Judges communicate release is the expected outcome in low-level cases.

Judges reinforce their expectation of release on money bail by confirming the defendant’s family in court can pay money bail. For example, in one case the APD reported the defendant had

no money for bail. Judge O'Connor wanted money to be a condition of release but did not want to jail the defendant pretrial and saw a family member, the defendant's mom, standing in the gallery. Judge O'Connor first addressed the sheriff standing next to the mother, asking, "can she post anything?" and then yelled across the room to the mother directly, "can you post anything?" After the judge listened for a moment, she ruled, "There's someone in court on his behalf and she is indicating \$100" then Judge O'Connor required \$100 to be paid for his release. Directly asking family how much they can pay during bond court proceedings demonstrates judges setting money bail to achieve release and the judge assuming money bail resources will be extracted from the defendant's family. This reflects the overall understanding of courtroom officials that a defendant's community often pays bail on the defendant's behalf. Judges and APDs interchangeably refer to the defendant and the defendant's family as the actor paying money bail. For example, on one day APD Hodgkin indicated, "he could pay \$300 for bond" and, in a different case, Judge Vasquez ruled, "you'll need to post \$500 to be released from custody." APD Hodgkin and Judge Vasquez both refer to the defendant as the actor paying money bail. The same day, APD Hodgkin and Judge Vasquez refer to the family as the actor paying money bail. Judge Vasquez explained to one defendant, "you must cooperate with the pretrial services department should your family post that amount," assuming the actor paying money bail would be the defendant's family. Similarly, APD Hodgkin speculated, "possibly he and the family could raise a substantial bond." Discussing money bail, Judges and defense attorneys refer to the defendant and their family interchangeably as the party paying money bail, reflecting an understanding that money bail is taking resources from the defendant's broader community.

There is a set of cases where defendants are temporarily jailed due to unaffordable money bail, but release is the judge's intended eventual outcome. For example, release on money bail and

some type of supervision is the common pretrial condition for defendants charged with gun possession who have a previous gun conviction in their history. For example, Mr. Evans was charged with a class two felony gun possession after police conducted a traffic stop for an unrelated reason, searched his car, and recovered a gun. Mr. Evans had a previous conviction for gun possession conviction, so prosecutors charged the case to a class two felony (720 ILCS 5/24-1.1). Judge Trent set money bail at \$6,000 D, requiring \$600 for release, and required a curfew with electronic monitoring. Mr. Evans explained, “literally [my fiancé] just had a baby last night and I, I literally can’t post nothing right now,” protesting that the monetary condition was too high for him to be released. Judge Trent acknowledged his comment, but responded, “Alright, well the court will enter and continue your motion to review bail to the next court date as of now the bail has been set at 6,000 D.” Judge Trent ruled that money bail would be required but acknowledged this pretrial condition may be temporary because money bail may be reviewed by another judge. The review is required at the next court date or within seven days by Illinois law when defendants are jailed due to unaffordable money bail (725 ILCS 5/110-6, before amendment by P.A. 101-652). If the next judge does not reduce the money bail, no one posts Mr. Evans’ money bail, he will be released in 20 days on credit. Each day in jail, defendants are credited \$30 of credit towards their money bail or 20 days for Mr. Evans’ \$600 money bail (725 ILCS 5/110-14). In this case, Judge Trent sets money bail but does not expect Mr. Evans to be jailed for the duration of his case. In cases with unaffordable money bail where release is the normal outcome, Judges can expect defendants to be released on credit or for future judges to change the money bail pretrial condition.

Defense attorneys can also request money bail review during bond court, implicitly critiquing the Judge for setting unaffordable bail. One Sunday, Judge O’Connor was presiding and was setting unusually harsh pretrial conditions, requiring money bail on all but one case and setting

mostly unaffordable money bail. The weekend defense attorney, APD Anders, was visibly frustrated and requested a motion to review money bail on every case where bail was unaffordable.

After the first ten cases, Judge O'Connor and APD Anders had this exchange:

APD Anders: You're honor this is another category B offense [requiring review].

Judge O'Connor: You're going to ask for a motion to review bond?

APD Anders: Well, yes your honor, I'm going to be asking [for a motion to review].

Judge O'Connor: Fine, I'll just put it on all of these cases.

Judge O'Connor expressed frustration through the curt phrase "Fine, I'll just..." APD Anders opposed Judge O'Connor's unusually harsh money bail by requesting money bail reviews on every case, implying her rulings out of step with the priorities of Illinois law. Later in the proceeding, she instructed APD Anders, "send [the motions to review bond] down as [the cases] go because we can't keep all the files up here" indicating the paper files were becoming confusing and cluttered due to the volume of motions to review money bail. Filing motions, APD Anders reduced case processing efficiency by creating a higher volume of paperwork than normal. Each motion has to be printed by a courtroom clerk in a separate office, brought to the court room, and inserted into the physical file open at the Judge O'Connor's table. This day was exceptional. Defense attorneys rarely ask for motions to review bond even when bond was set at an unaffordable level. Thus, the conflict between APD Anders and Judge O'Connor is an exception that proves the general rule that defense attorneys avoid critiquing the Judge and support efficient case processing.

Occasionally, Judges will use money bail as a mechanism to jail people pretrial. Judges do not explicitly use jailing as justification for setting unaffordable money bail but jailing can be expected as the outcome when money bail is set at a very high level. For example, Judge Simmons set a pretrial condition of very unaffordable bail on a series of gun possession case. In this case, the defendant was charged with possessing two guns, had a pending gun possession case, and was previously convicted of gun possession. Judge Simmons set bail at \$500,000 requiring the

defendant pay \$50,000 to be released and also imposed electronic monitoring, the most restrictive non-jailing pretrial condition. Setting conditions as high as possible and setting monetary bail at a highly unaffordable level Judge Simmons attempts to achieve pretrial jailing. Judge Trent adopted a similar strategy, addressing a case where the defendant was on pretrial electronic monitoring, sheriffs searched his home and found a gun, leading to new gun possession case before Judge Trent at bond court. Judge Trent expressed his frustration, saying, “He’s no longer eligible for EM bc he violated his past EM, I have no other restraints that I can use [beside money bail]” and then set a \$75,000 money bail when the defendant reported having no money for bail. Here, Judge Trent is referring to money bail as a mechanism to jail the defendant. Release on money bail is restrictive, the defendant has financial exposure, but not as restrictive as electronic monitoring which confines the defendant to their home and monitors their movement. Thus, “restraining” the defendant using money bail can be most accurately interpreted as “restraining” them in jail pretrial due to an inability to pay money bail. In both cases, Judges set an unaffordable money bail to achieve the outcome of pretrial jailing. This jailing is contingent on the review of future judges, who may reduce bail to an affordable level. Pretrial jailing without money bail is subject to less review and signals a case is more serious to future judges (725 ILCS 5/110-6.1, before amendment by P.A. 101-652). By setting unaffordable bail that will result in pretrial jailing, Judges also communicates to prosecutors that pretrial jailing is viewed as appropriate in similar cases. Setting extremely unaffordable money bail, Judges achieve pretrial jailing in a particular case and communicate to prosecutors they are open to pretrial jailing in similar cases.

Prosecutorial discretion and pretrial jailing

Prosecutor’s charging decisions are the first point of discretion in the pretrial jailing process, determining if the defendant can be jailed pretrial. Pretrial jailing is mandatory for a subset of

serious charges (725 ILCS 5/110-6.1, before amendment by P.A. 101-652). Prosecutors make charging decisions before a case reaches bond court. This means, when serious allegations are involved, prosecutor's exercising their charging discretion also decide if the defendant will be jailed pretrial. For example, in one case the defendant was initially charged as a weapon possession and reckless discharge of a weapon. These charges are serious, with over a decade of possible prison time, but are not vulnerable to a mandatory jailing request. Before proceedings began, however, ASA Alexander interjected to "file an additional criminal complaint with the class X charge of attempted murder." Attempted murder qualifies for a jailing request (720 ILCS 5/8-4; 725 ILCS 5/110-6.1, before amendment by P.A. 101-652). The Judge explained the impact of this change to the defendant, saying, "The state has filed an attempt murder charge against you and in doing so that opens up the possibility of a no bail hold [pretrial jailing]." Prosecutor's first point of discretion in the pretrial jailing process is deciding to file charges that are eligible for pretrial jailing.

Prosecutors also decide when pretrial jailing will be possible by entering a pretrial jailing request. For pretrial jailing without the possibility of release on money bail to be a pretrial condition, prosecutors must write and argue a pretrial jailing request (*People v. Gil*, 2019 IL App (1st)). Prosecutors argued there was an immediate threat the defendant will hurt the victim from the incident that led to an arrest to justify pretrial jailing requests for attempted murder or class X gun possession arrests made after a domestic violence call for service. However most pretrial jailing requests were made for class X gun possession cases and justified using a blend of performance and dangerousness logics. Laws criminalizing gun possession in Illinois follow performance logics categorizing the same underlying conduct, possession of a gun, as an increasingly serious crime based on past criminal convictions (720 ILCS 5/24-1.7). ASAs heighten performance logics by considering violation of court conditions in their decision to file pretrial jailing requests. Of the

class X gun possession cases I observed, prosecutors requested pretrial jailing half of the time. Prosecutors only requested jailing for class X gun possession cases when defendants were already on court supervised pretrial release or probation at the time of arrest or the arrest resulted from a domestic violence call. This demonstrates ASAs adopt performance logic, requesting pretrial jailing when the defendant is already being supervised by the court at the time of arrest.

Prosecutor's rhetoric in discretionary no bail cases mirrors their normal script but adds an explicitly interpretive section at the end for legal argument. Prosecutors begin by sharing the police-reported facts of the case, using more detail than in general proffers. Then, prosecutors recount the defendant's LEADS report. At the end of the argument, Prosecutor's highlight key facts to argue the legal standard that the defendant is likely guilty, presents a danger to the community, and no combination of conditions could prevent that danger. The Prosecutor's legal argument highlights performance and defendants violating court conditions. For example, ASA Louis, a white woman who has been working at the prosecutor's office for more than five years, emphasized performance in the conclusion to her argument, stating, "I will again note the defendant was sentenced in October of 2008 and the reason that I bring that up again [is] it shows that very shortly after being released from prison he picked up the 2012 gun case. As such judge, the defendant has shown a nature of continuously picking up criminal offenses." In this argument, ASA Louise is emphasizing violating previous legal conditions as justification for harsh current conditions, adopting the logic of performance. To further enhance her rhetoric, she argues the defendant's "nature" is criminal. Selecting the word "nature" to describe repeated arrests, ASA Louise adopts the logic of pathology, stating this person is inherently dangerous and inherently unable to comply with court conditions rather than an agent making choices with the capacity for change. Given this defendant is a young black man, coming from a highly policed majority black neighborhood, and ASA Louise is a white

woman, invoking “nature” of criminality echoes racist rhetoric of black criminality in United States culture (Muhammad 2010). Prosecutors use rhetoric in discretionary no bail petitions that emphasizes performance and the arrest as a violation of court conditions.

ASAs currently influence which cases result in pretrial jailing without money bail more strongly than judges or APDs. Judges approved every pretrial jailing request I observed. In the cases I observed, Judges mirrored prosecutor’s performance-based justification for pretrial jailing. To rule a defendant will be jailed, Judges have to justify aloud that “no conditions or combination of conditions...can reasonably assure the physical safety of any other person or persons” (Evans 2017; 725 ILCS 5/110-6.1, before amendment by P.A. 101-652). The justify no combination of pretrial conditions can “reasonably assure” safety, judges often reference documentation in the LEADS report that defendants have violated court requirements and laws in the past. For example, Judge Trent addressed the defendant while ruling one case, “[y]ou're currently on parole when you're out on parole it's like being out on bond there's certain expectations one of them is you do not violate the rules of the state of Illinois...you're out on parole for armed habitual criminal possession of weapon and here you are again in possession of a weapon the fact that you couldn't abide by the terms your parole tell me you're not going to abide by any terms that I lay down either.” Here, Judge Trent uses a violation of parole conditions to justify his finding no combination of conditions could “reasonably assure” safety. This logic does not fully engage the options available to judges. For example, Judge Trent does not address why electronic monitoring, a restrictive form of full-time surveillance and regular sheriff visits, would not be effective. Defense attorneys often present detailed arguments in response to pretrial jailing petitions. In this case, APD Hodgkin extensively critiqued the evidence collection procedure then addressed the question of alternate conditions, arguing the defendant could pay a substantial money bail, shares a home with his partner and their

newborn daughter, and could do electronic monitoring from that home. In all pretrial jailing cases I observed, however, the defense attorney could not sway the judge. Judges ruled in favor of the ASAs in all pretrial jailing requests I observed.

ASAs currently most strongly influence which cases result in pretrial jailing with Judges signaling they are open to pretrial jailing for a broader range of cases. All the pretrial jailing requests I observed were approved, suggesting requests that would be more closely contested or borderline are not being filed. For example, I speculate class X gun possession cases where the defendant only has gun possession cases in their criminal history or class two gun possession cases where the defendant has fewer previous conditions are two categories of charge where the same performance logics and association of gun possession with dangerousness may support a pretrial jailing request that judges would approve. Despite what *may* be approved, the more crucial point is that the current type of case leading to pretrial jailing without money bail is being determined by ASAs. Judges have signaled they are open to pretrial jailing in a wider set of cases, setting extremely unaffordable money bail for some class X and class two gun possession cases that will likely cause defendants to be jailed unless a future judge reduces the money bail amount. Judges consistently granting pretrial jailing requests and setting extremely unaffordable money bail in some cases suggests that ASAs are not making borderline pretrial jailing requests where they both win and lose similar cases. Thus, at this point, ASAs exercise the most influence for who receives jailing without the possibility of release as a pretrial condition.

Justifying pretrial conditions

Setting bail and pretrial conditions, judges are working towards practical outcomes, but they are also communicating with prosecutors and defense attorneys. Pretrial conditions communicate what types of charges and LEADS report are most significant to the judge. Further, Judges highlight

the type of evidence that is most important and form of logic that is persuasive in their decision making justifying their decision during their ruling. Public rulings I observed are made on the record and heard by prosecutors and defense attorneys. These public rulings do not necessarily correlate with judges internal conscious or subconscious thoughts (Jerolmack and Khan 2014). Rather, the ruling is a way to justify their choices as a professional and communicate priorities with other members of the courtroom working group. Setting and justifying pretrial conditions, judges communicate to other court officials what reasoning is persuasive in their decision making.

Performance

Court officials rely on performance logics as a core justification for pretrial conditions in Central Bond Court. Court officials adopt a performance logic by examining defendant's compliance with a task that is required by court officials and examined at a future court date (Kohler-Hausmann 2018). For example, Judges invoke performance logic to justify lenient pretrial conditions for defendants charged with low-level gun possession when the defendant has previously performed the task of getting a FOID card gun license. In a third of class four gun arrests, the defendant is a legal gun owner with a FOID card Illinois gun license. The arrest usually occurs after police stop the defendant while they're driving, police search the car, and police find a gun stored outside of a specialized case required for transportation when the gun owner does not have an additional concealed carry license (430 ILCS 65/0.01; 430 ILCS 66/1). The volume of felony cases criminalizing licensed gun owners reflects police policy of conducting car stops and then searching vehicles, a policy which disproportionately impacts low-income black and Latinx people (Office of the Inspector General 2022; Olson et al. 2021). Judges view having a FOID card as an instance of positive performance, successfully fulfilling a legal task by applying for a FOID card with the Illinois State Police and then receiving this license to own a gun. In the cases I observed, nine of

ten defendants with a FOID card are released on an I-Bond, the most lenient pretrial condition. In contrast, only two of ten defendants without a FOID card and arrested on gun charges were released on an I-Bond with most given money bail as a pretrial condition. For one charge, class four gun possession, Judges are significantly more lenient when the defendant has a FOID card. This demonstrates performance logic as judges set less restrictive conditions for people who have performed the task of obtaining a gun possession license.

Judges mobilize performance logic in gun cases to justify strict pretrial conditions for defendants with previous convictions. In gun cases a task examined is interaction with the legal system through arrest, court condition, and criminal conviction. These tasks are documented in the LEADS report which Judges examine to determine if defendants have demonstrated compliance with the task of following the law in the past. Performance logic is explicitly adopted by Judges. For example, one defendant was arrested on gun charges while a separate gun case was in process. Judge Trent used this re-arrest as evidence to justify setting unaffordable money bail, stating, “He’s clearly proven that he cannot abide by the current terms and conditions of his probation first and foremost not picking up any new offenses.” Judge Trent echoes the rhetoric of multiple Judges by stating avoiding re-arrest is the “first and foremost” task for defendants. Judge Trent adopts performance logic, explains the defendant failed to perform the task of avoiding rearrest to justify imposing escalated pretrial conditions.

Dangerousness

Many Judges use past law violations as evidence of dangerousness. This logic is similar to performance, where not completing a task justifies escalated punishment, but in the logic of dangerousness, past violation of the law suggests future law violations that *may hurt others*. Crucially, it is not required that past law violations hurt others for Judges to label the defendant as

“dangerous.” For example, for Judge Ortiz, status as a person with a felony conviction is enough to make their conduct dangerous. The previous felony conviction may be non-violent, for example having an illegal drug, contested, for example possessing a weapon, or may have hurt someone else. Judge Ortiz does not state the *content* of the past conviction but the person’s *status* as a person with a felony conviction. She routinely states, “a convicted felon in possession of firearms does constitute a danger to the community” as justification for pretrial conditions. Judge Ortiz communicates the defendant’s status as a person convicted of a felony is her central justification to court officials. In one case, she acknowledged, “His previous criminal history, as council for him said [...] is extremely remote,” then continued, “However, a convicted felon in possession of firearms does constitute a danger to the community.” Even when the previous convictions are remote in time, it is the existence of any conviction which makes weapon possession dangerous in Judge Ortiz’s calculation. Here the underlying conduct, gun possession, is defined as uniquely dangerous due to the defendant’s previous law violation justifying more harsh pretrial conditions than people accused of gun possession without a previous conviction.

Judge Simmons defines dangerousness by connecting underlying conduct of individual gun possession with the public concern for gun violence in Chicago. To introduce her ruling on one case, Judge Simmons stated, “According to the people’s proffer, [the defendant] was is in possession of a loaded firearm in a car in the city of Chicago.” She routinely names “the city of Chicago” as the location for gun possession. Invoking “the city of Chicago,” Judge Simmons suggests her justification for pretrial conditions on gun cases are specific to the city of Chicago. This implies gun possession in Chicago is different than gun possession generally, invoking concerns about gun violence in the city that span political perspectives (Laurence 2021; Nitkin 2022). By invoking “the city of Chicago,” Judge Simmons indicates that she assumes people with

gun possession charges are related to gun violence instances in the city. Judge Simmons connects gun possession with dangerous by invoking “the city of Chicago” as the location of alleged gun possession, implying gun possession is uniquely dangerous in Chicago due to the overall levels of gun violence in the city.

Judges justify pretrial conditions for gun cases with modified weapons by connecting modifications to gun violence in Chicago. Judge Simmons’ Chicago justification is mirrored by Judge Trent when guns are modified. Judge Trent is a more lenient judge in terms of pretrial conditions for gun charges, setting I-Bonds relatively often and emphasizing it is possible to legally own a gun. Like Judge Simmons, Judge Trent invokes Chicago to strengthen his justification for finding an alleged incidence of gun possession violent. For example, in one case Judge Trent explained:

“More importantly in my mind [than prior convictions] is that this weapon had been modified to become an automatic weapon, meaning it was against the federal law as well as state law to hold a weapon that has possession of fire automatically like a machine gun fires. That weapon and that type of modification exists for only one reason in my mind, in the city of Chicago. [...] That is to be a danger to other individuals, to commit an act of violence.”

First, Judge Trent emphasizes the importance of modifying a weapon to court officials by saying it is even more important than prior convictions. This communicates to court officials that facts about weapon modification are central to his decision making. Next, Judge Trent continues his focus on the legal possibility of owning weapons, emphasizing this gun cannot be legally owned by anyone because it is fully automatic. Finally, Judge Trent mirrors Judge Simmons by invoking gun violence in the city of Chicago, saying the gun only exists “to be a danger to other individuals, to commit an act of violence.” Multiple judges cite gun modification as a cause for concern and assign more strict pretrial conditions in cases with a modification. Here, Judge Trent says that gun modification outweighs the logic of past performance and connects the defendant’s gun possession to fears about

gun violence in the city of Chicago at large. This communicates gun modifications are crucial facts for court officials to engage and used as justifications for strict pretrial conditions by judges.

Judges justify unusually strict pretrial conditions for first-time gun cases when the defendant is young by connecting being young with gun violence. In gun possession case with young defendants, Judge Ortiz connects being young with proximity to gun violence. Judge Ortiz relies on the phrase, “In the hands of children, those are weapons of mass destruction” to emphasize that guns are dangerous and to claim that young defendants are not responsible decision makers, referring to them as “children.” In one case, the 18-year-old defendant’s mother was in court, and Judge Ortiz used her presence to reinforce the perceived youth of these defendants. She ruled, “bond is going to be set in the amount of 4000D with electronic monitoring as a condition of bond. I want this young man in the house under the supervision of his mother.” Judge Ortiz emphasizes her central motivation for pretrial condition of electronic monitoring, the most invasive condition aside from jailing, is treating this defendant as a child and using his mother to “supervise” him. This supervision is not, in fact, familial or childlike but enforced by the sheriff who will always have access to the defendant’s location through the electronic monitor. Thus, while Judge Ortiz’s logic emphasizes childhood and lack of decision-making capacity her response to this logic is the unusually harsh condition of electronic monitoring for a first time gun possession arrest.

Exception of drug cases

Drug cases are unique in bond court because judges rely on an explanation for the charge, addiction, to justify release conditions instead of the defendant’s performance or predicted dangerousness. Judges release two-thirds of defendants with drug charges. Drug charges are separated into “possession” and “manufacture and delivery” cases. I observed consistent money bail and pretrial supervision conditions between both charge categories so I will refer to the

collectively as drug charges. Judges justify pretrial conditions in drug cases by addressing drug cases as a symptom of addiction, but Judge's understanding of addiction greatly differ. Judge Trent frames addiction in medical terms and assumes external support is needed to remain sober. For example, Judge Trent commented to a defendant with possession charges, "Sir whatever brought you into this building don't let it bring you back. If you need some assistance in some way seek it...it's much better to get treatment and take care of yourself." This commentary reflects an understanding of drug possession as a problem which requires "assistance" and "treatment," implying a medical understanding of addiction. Judge Vasquez also centers addiction as a justification for releasing people with drug charges but her understanding of addiction emphasizes individual responsibility and individual moral failure to invoke themes of shame when lecturing defendants. For example, Judge Vasquez began her ruling in a drug possession case with two defendants, "I agree with council [for the defendants] that both these criminal histories scream addiction. And an addiction will lead you two places, dead or jail." Judge Vasquez shares the assumption that addiction is the underlying cause of this conduct and attempts to intervene by addressing defendants directly, specifying "addiction will lead *you* two places" and attempting to scare or warn them by concluding addiction leads to being "dead or jail[ed]." Her emphasis is on the individual and aimed to invoke fear or shame to motivate an individual choice to be sober. Both Judge Trent and Judge Vasquez choose to directly address defendants with drug charges, assume the underlying cause is addiction, and try to encourage defendants to stop using drugs. Judge Trent emphasizes "assistance," "help," and "difficulty" in these lectures while Judge Vasquez emphasizes personal choice and fear in her lectures. Despite diverging understandings of addiction, both Judges use addiction as an explanation for having drug charges and a justification for releasing defendants.

Conclusion

Logging onto to YouTube, riding the bus to court, I collected data to create this record answering the question, how do court officials set and justify pretrial conditions. I learned pretrial conditions are set in a highly routine setting. Judges use money bail to condition pretrial release and try to achieve jailing in extreme cases. Overall, pretrial conditions are justified through the logic of performance which is amplified in gun cases by arguments about dangerousness. Court officials follow a well-worn routine to set and justify pretrial conditions in Central Bond Court today.

Money bail is a central part of this routine, discussed in nearly every APD statement and set as a pretrial condition in most cases. Eight months after the conclusion of my data collection, six months from this writing in July of 2022, the *Pretrial Fairness Act* will take effect in Illinois and abolish money bail (Illinois Public Act 101-652). This will be a significant disruption to the bond court working group. Currently, pretrial jailing is achieved through a mixture of unaffordable money bail set by judges and requests by prosecutors. This prompts the question: will prosecutors change their routine and increase pretrial jailing requests to jail defendants currently incarcerated on unaffordable money bail? Currently, money bail is currently used as a communicative device for judges to demonstrate how severe they find a case. This prompts the question: after money bail is abolished, how will judges communicate case meanings to courtroom officials? Currently, pretrial hearings happen immediately but after the *Pretrial Fairness Act* defense attorneys could request a 48-hour period to prepare. Will this procedural justice protection shift the epistemic authority in bond court, giving defense attorneys additional time to investigate the incident and interview defendants independent of the police? I cannot answer these questions about the impacts of bail reform, writing from July of 2022. Future researchers can address these questions by

studying Central Bond Court after the *Pretrial Fairness Act* takes effect, comparing a working group before and after structural disruption.

In this case, contributing to working group theory is not only an academic exercise but creates political tools to resist mass incarceration. There is a growing recognition that pursuing racial and economic justice in the United States requires shrinking the carceral system. But the connection between changing laws and shrinking the carceral system is not self-evident. Working group theory itself emerged, in part, to explain the puzzle of the limited impact of procedural justice protections. Recording the pretrial conditions set in Central Bond Court today allows us to understand the impact of a disruptive reform and identify unintended consequences in the future. Recording the conditions in any court requires us to consider the practical implementation of policy and law, designing more grounded and, ideally, impactful reforms.

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