"A CRITICAL ANALYSIS
OF
THE LAW RELATING TO BAIL"

(A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE LL.B DEGREE, UNIVERSITY OF NAIROBI)

BY

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"DEDICATED TO OUR CHILDREN -ALLAH, MORVY, KENVILLE AND CHUMBA WHO MUST ASPIRE TO HIGHER GOALS"

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ABBREVIATIONS USED IN THE DESSERTATION

Books and Periodicals

N.Y.U.L.R.	New York University Law Review (1963)

Cases

All E.R.	All England Reports 1895-1899
E.A.L.R.	Eastern African Law Reports 1972 and 1973
G.L.R.	Ghana Law Reports 1971
I.R.	Irish Reports 1966
T.L.R.	Tanzania Law Reports 1972

Statute

CP C.P.C.	Criminal Procedure Code

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INTRODUCTION

Throughout history, man has shown that he is prepared to fight and even die for the course of justice and the love of liberty. This is why even the Kenya constitution guarantees a citizen's right to liberty.The constitution further requires that justice should not only be done but should manifestly be seen to be done. The traditional right to freedom is also found in the Criminal Procedure Code of Kenya which contains provisions that relate to bail. The spirit of the procedure is to enable accused persons to stay out of jail until they are tried and found guilty.

This thesis attempts to present an insight into when the system of bail started, how the law of bail is applied today and the weaknesses that can be said to cause injustice.Finally, the thesis recommends the necessary reforms in order to cure the present ills of the law on bail.

CHAPTER 1

THE MEANING, ORIGIN AND OPERATION OF BAIL

MEANING

On the onset, the point that calls for determination is the meaning of bail. When one is granted bail, what in effect does it mean ? Sections 123-133 of the C.P.C.[1] contain salient provisions as to bail. Unfortunately in none of these sections is the term bail defined. However, various persons have attempted to define it. According to Superintendent D. Develin, bail is

> "... a recognisance taken by a court, justice, police officer or other person conditioned for the appearance of an accused person at a specified place and time to answer the accusation."[2]

Close to Kenya, Douglas Brown, one time the head of the Uganda School of Law, gave the following definition :

> "Bail consists of the temporary release of an accused person from imprisonment on finding sureties or security to appear for trial."[3]

In the case of R- v -ROSE Lord Russel C.J., stated that

> "...the requirements as to bail are merely to secure the attendance of the prisoner at the trial."[4]

It is therefore apparent from the above that the purpose of granting bail is to ensure by the a method that is least injurious or burdensome to the accused person reasonable assurance that he will appear for trial. It does not in any way mean the accused is acquited. If he fails to turn up, his property will be forfeited. It is assumed that the threat of forfeiture of one's goods will be an effective deterrent to the temptation to break the conditions of one's release. And even after forfeiture, this does not bar the accused from answering the charge.

THE ORIGINS OF BAIL

The system of bail originated in mediaval England. It originated as a matter of necessity since magistrates used to travel from country to country and were often in a particular locality only a

few months each year. As a result, trial was often delayed for years and it was only reasonable for an accused person to obtain provisional release from custody. Even in less serious offences, the accused had to wait until the sheriff held his tourn and the element of delay was always present.

Moreover, many of the prisoners died due to bad sanitary conditions in the prisons. As late as the 17th. Centuary, there was no provision of adequate food for accused persons and many of them starved to death. Futhermore, imprisonment was expensive - a feature that still recurs to-date. The government has to maintain the prisoners and the cost is indirectly placed on the public. In any case jails were often broken and prisoners escaped. It was therefore preferable to release the accused persons on a temporary basis while they awaited trial. The sheriff who wanted to rid himself of the responsibility of the up-keeping of the prisoners and liability in the event of the accused persons escaping, release them either on their own recognizance with or without requiring the posting of some sort of bond , or on the promise of a third party to assume responsibility for the accused's appearance at trial. Initially if the accused person absconded, the third party custodian was required to forfeit a promised some sum of money if the accused failed to turn up. In practice local land-owners were preferred as sureties and were given the powers of a jailer to prevent the accused's flight. This system seemed eminently reasonable in an immobile land-orianted society there was need for change as society progressed. Futhermore thesead ad hoc arrangements between the sheriff and the accused persons were not systemised and codified into the English legal framework. This naturally led to a lot of abuses since the sheriff granted bail whenever he thought proper.

The first attempt to cure the above ill was through the Statute of Westminister of 1275, which attempted to standardize the practice of bail. It specified the conditions under which pre-trial release was permissible, limited the power of the sheriff to determining sufficient security in each case, a power susequ subsequently transfered to the justices of peace.

The Statute of Westminister was in force for five centuries and it was not until 1826 that we find another change. In that year, the British Parliament passed the Criminal Justice Act which placed the grant or refusal of bail on an entirely new footing. The Act provided that when a person who was charged with a criminal offence, the decision to grant bail was to be determined not by reference to the nature of the offence, but rether by reference to the weight of the evidence, Where the evidence against the accused looked "positive and credible" and hence raising a likelihood of a conviction, the accused would not be granted bail. But where the evidence against the accused person was weak, then he had to be granted bail.

In 1848 the position was further altered by the Criminal Justice Act of that year which established the basic rule by which a single justice had the power to grant bail in his complete discretion. In time therefore, grant of bail became a discretionary function of the judiciary and remains so to the present day. The process of change however, seems to have occured without any clear perception of the functions of bail ought to serve, with the result that the institution of bail currently consists of an incoherent amalgam of new and old ideas serving more to defeat than to achieve the aims of the criminal process.For instance, the discretionary power of a magistrate in the C.P.C. is almost unlimited- he can grant bail in all cases except in cases of murder and treason.[5] Since there is no statutory indication as to the way in which the discretion to grant bail is to be exercised, it is obvious that the discretion can be abused. A magistrate has no reference whatsoever to turn to in exercising his discretion to grant or refuse bail, but it suffices to say the decision depends entirely on the personal whims of a particular magistrate. In such a sensitive area of the law, where a citizen's constitutional right to liberty is threatened, one sees a clear demand for laid down principals to govern the exercise of the discretionary power.

A further question that calls for determination is whether bail is a constitutional right. S. 72(2) (a) of the constitution provides that:

> "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty."[6]

The combination therefore requires the court to hold the accused person as innocent and by virtue of his innocence, he should not suffer any injustice but should be granted bail. In the case of <u>GIYAKE -v- THE REPUBLIC</u>[7] the accused person had been charged with the offence of murder. The trial judge ruled that the constitutional provisions of bail were mandatory and he added:

> "I am compelled within the spirit and the letter of the constitution to allow the applicants to bail."

In Kenya , there is no authority which indicates that courts have accepted bail as a constitutional right. When the Chief Magistrate F.E. Abdulla was faced with the issue of whether bail is a constitutional right, he avoided it by simply saying:

> "It would be presumptious on my part to venture any opinion on the interpretation of this clause of the constitution. Such interpretation may be made by the High Court in accordance with S.67 of the constitution, and in my knowledge, the High Court has not been required to do so so far."[8]

It is my contention that when the time arises for determination of whether bail is a constitutional right, the High Court will not erase the presumption of innocence by declaring that bail is not a constitutional right. What do you mean

Furthermore the constitution does not distinguish between bailable and non - bailable offences. One wonders therefore why the C.P.C should deny bail in cases of murder and treason. S.3. of the constitution provides that the constitution is the supreme law of the land and that any other law that is inconsistent with it is void to the extent of that inconsistency. It can therefore be said that the C.P.C. in refusing grant of bail in respect of murder and treason is unconstitutional and void. So held in this case of 1985

1981 - Good lawyer!! sense seen 5 yrs later in Magiri case

However the C.P.C. seems to indicate that the right to bail is denied in murder and treason cases on the theory that the likelihood of flight is increased where a man is given the

> "...choice between hazarding his life before a jury and forfeiting his or his sureties' property."[9]

As to the question whether the conditions in jails today have radically changed for the better so that an accused person suffers

less injustice and hence the need for a temporary release is not as great as during the mediaval times, the answer is obviously in the negative. It is common knowledge that jails are the most detested places by all persons- be they hardcore criminals or not. One American writer, Thomas H. Wayne describes the detestation thus:

> "Jail. The very name is used to strike fear in the minds of children. And the reality is at least as bad as the thought. Not just mur for murderers and robbers, but for thousands of others who have done nothing more serious than argue or fight a little too vigorously with their wives or friends or succumb to a moment's temptation to take something that did not belong to them or may be they have done nothing at all. One does not have to be guilty of anything to land in jail, only to be accused."[10]

and of course the horrifying experience is the same for both the innocent and the guilty as one enters

> "...into a crouded tiny room full of faul-smelling strangers who are at best not friendly and at worst physically or sexually threatening. Either way you are helpless, ashamed and afraid. You don't know what is going to happen to you, to your family or to your job if you have any. If you have money and can contact your people you may get out. If you are poor you don't get out."[10]

The experiences described above are by themselves sufficient enough to justify a liberal grant of bail. The need is even greater when we realize trials in Kenya are often for months on end while accused persons languish in custody all that while. The institution of bail originated to cure this ill and the need for the upholding of the spirit of the institution is therefore apparent in Kenya.

THE OPERATION AND THE SCOPE OF BAIL

Having looked at the meaning and origin of bail, the next issue to be determined is its operation and its scope. When can bail be granted ?

When an accused person is brought before a magistrate, bail is one of the first issues to arrise. This is because even if the magistrate's court has jurisdiction to try the case forthwith, it will not normally do so. The prosecution may want more time to prepare or the

court may be overburdened with cases and hence a need for temporary release becomes imperative.

Similarly, if the magistrate's court cannot try the case but is only compowered to conduct a preliminary inquiry, there still may be an adjournment and hence a delay which calls for a grant of bail.

The issue of bail also arises whenever arrest is made under a warrant because magistrates are authorized to fix bail at the time they issue such a warrant. The ammount so fixxd is endorsed on the warrant and the police without further judicial notice can themselves attend to the taking of bail. Under S. 124 C.P.C. the police have authority to admit to bail any person arrested without a warrant if they do not regard his case as a serious one; and if he cannot be brought to trial within 24 hours.

In addition to the above instances, application for bail can also arise after conviction and before sentencing. But in such a case the accused is in a radically different position from before since he has a much weaker case for bail. His conviction has the effect of removing the presumption of innocence and adds to the possibility that he may try to escape. Furthermore, the easy grant of bail might be of inducement to ingage in dilatory and frivolous appeals. In Kenya it is rarely granted at this stage. The position in England is like that in Kenya in that if it is granted at this stage, it is on much more stringent terms. This is because in both England and Kenya there is a strong presumption that conviction at trial establishes guilt.

In contrast, some states in Americs grant it with comparative ease and on terms not much different from those required before conviction because in the United States it is often thought that no one is definitely guilty unless hehas had at lest one appeal.

The next point of determination is how the system of bail operates. There are various ways of granting bail. In the first instance the court can require an accused person to deposit some cash or property which will be forfeited on failure to turn up for trial. Needless to say, the courts in Kenya have consistently demanded a deposit of cash and ignored the provision that relates to property in place of money.

Secondly, bail may be granted on one's recognisance, that is, a promise by which he undertakes to appear for trial or else forfeit a

stated sum of money. Where this is thought sufficient one or two sureties may be required to enter into a similar recognizance on the accused person's behalf. Sureties are usually required in serious cases, when the accused

> "...(a) has no fixed abode (b) is a prostitute; (c) is an alien; or (d) suicidal tendencies." [2]

The accused person on arrest is usually asked to put down the names of relatives or friends he thinks will act as sureties. The police are supposed to investigate them and report whether they consider these persons acceptable in the light of their character and financial status. The sureties must also be of some social standing in the community - they must be reliable citizens. The sureties must also understand what they are undertaking to do.

Having worked at the meaning, origin and how bail operates, the next chapter will seek to analyse the practical workings of bail in the courts in Kenya, to point out short-comings of the law as relates to bail; to find out whether the courts grant it with impartiallity.

CHAPTER TWO

A CRITICAL ANALYSIS OF THE REASONS FOR REFUSAL TO GRANT BAIL

INTRODUCTORY

The second chapter seeks to have an analysis of the reasons for refusing to grant bail.It will examine the weaknesses of each consideration, analyse whether all reasons carry equal weight in the granting of bail, and whether there is any criteria used for setting the amount of bail.

Bail is normally objected to if there is a likelihood of the accused absconding; or interfering with witness, or if the offence with which the accused is charged of is of a serious nature; or if the evidence against the accused is strong and hence a likelihood of the prosecution establishing its case beyond reasonable doubt; and finally the antecedents of the accused are relevant in arriving at a decision to grant bail because if the court finds that he has a "bad record" then he may not be granted bail.

There is no clear authority as to which of these reasons carries more weight. The C.P.C. (Kenya) simply enumerates the reasons upon which the decision to grant bail may be based.

Decided cases however, indicate that the chief consideration is whether the accused is likely to turn up for trial. In R -v- ROSE[4] Russel C.J. stated that the principal test is whether the accused will attend his trial. He further stated that whether the accused will turn up for trial is qualified by the seriousness of the offence, the strength of the evidence and the likely outcome-

> "... it is that account alone that it becomes necessary to see whether the offence is serious, whether the evidence is strong and whether the punishment is heavy".[4]

Douglas Brown in his book[3] which has particular reference to Kenya and Uganda agrees with the above view - that the principal test is whether the accused will turn up for trial.

In kenya the practice also suggests that the accused's attendance on the trial date is the chief consideration. The seriousness of the offence charged for instance will determine whether the accused will attend his trial, because the more serious the offence charged, the higher the chances of absconding. The grant of bail on the

strength of a security also works on the presumption that the accused will turn up for his trial rather than forfeit his property. If the evidence available against the accused is strong, then the law presumes that the accused knows that he is likely to be found guilty and hence might abscond. However, the allegation that the accused is likely to interfere with witnesses has no relevance to the accused's appearance before trial.

INTERFERENCE WITH WITNESSES

The allegation of the accused interfering with witnesses is one of the most difficult considerations for a court to evaluate. This is because such an allegation can easily be made and is often made without foundation. On the other hand, fears of this sort may well be felt strongly by experienced police officers. and yet be incapable of proof. If the court finds a valid ground that there is a likelihood of the accused person tampering with witnesses then it is only logical to lock him up. But how does the court arrive at this decision ? The allegation that the accused might tamper with witnesses is mere speculation. There is no way it can be proved that the accused is likely to interfere just as much as he is not likely to interfere. In this kind of speculation the benefit of doubt should go to the accused person because he is more likely to suffer by being kept in custody especially if he is innocent. The court should be able to look at the accused person and the prosecutor as both reliable and not treat the prosecutor's word as more weighty. Afterall the only difference between them is that one is charged and the other is not, otherwise they are both capable of telling lies. In R -v- ESAU JAMES AND DANIEL OKOTH[11], a case dealing with interfference although not with witnesses, the court refused to grant bail and accorded more weight to the prosecutor's word and did not take the assurance that the two accused persons promised not to go back to their places of work. The two accuseds had been charged with inciting other workers to cause trouble in the industrial area of Nairobi. They applied for bail but the prosecutor objected on the ground

that there was a likelihood of the two accused persons causing more trouble by further inciting the other workers. The two accused promised they would not go to their places of work but to their respective homes. The court did not grant bail despite their aassurance not to go back to their places of work. In such a case one finds no reason why the prosecutor's word was accorded more weight than that of the accused persons. Is it not more likely that the two accused persons would go back to their homes rather than go back to the industrial area? What proof does the prosecutor have that the two accused persons are going to cause more trouble? It is all sheer speculation and to deny a citizen the right to bail merely because of a speculation is a gross injustice. In any case to treat the accused's words as of no substance simply because he has been charged (italics mine) erodes the presumption of innocence. The constitution provides that

> "Every person who is charged with a criminal offence shall be presumed innocent until it is proved or has pleaded guilty."[6]

Why therefore should an accused suffer injustice simply because he is "guilty" of being charged? The magistrate ought to look at the prosecutor and an accused person as equal and not to be biased against the accused.

Furthermore, it is not uncommon for the prosecution to object to an application for bail on the grounds that the accused will tamper with witnesses with no valid reason for thinking so. In Kenya there is no decision that indicates that the courts have warned themselves of this danger. But in Tanzania and Uganda the courts have time and again warned against allegations made by the police which have no base. In the Tanzanian case of PANJU -v- REPUBLIC [12] the accused had been charged with the offence of removing property under lawful seizure, namely 400 tins of cooking oil and 1,400 hides. An application for bail was objected to by the prosecution on the ground that the accused might interfere with witnesses who lived near the Tanzania border of Tarime by influencing them to move away. The court rejected the allegations and granted the accused bail. The prosecutor once again applied for bail to be

withdrawn.The court that heard the second application warned against using unsubstantiated information.It noted that the magistrate who first heard the application

> "... was right in discounting such allegations ... as such allegations need to be substantiated by affidavit..." [12]

The court further noted that if magistrates were to act on allegations, fears or suspicions thent the sky would be the limit since there would be no occasion when bail would be granted whenever such allegations are made.

The need to substantiate the allegations was also stressed in another Tansanian case- JAFFER -v- REPUBLIC.[13] In that case the accused had been charged with corrupt transactions . The prosecution objected to an application for bail on the ground that the accused person might interfere with three witnesses whom the police still had to interview. The court of first instance rejected the application and the accused person appealed against that decision. Mzavas J. , who delivered the opinion of the appellate court quoted Wilson Ag. C.J., in BHAGWANJI KAKUBHAI -v- R[14] who had stated that

> "The tests laid down in English cases were that there should be a definite allegation of
>
> tampering with witnesses supported by proved or admitted facts showing a reasonable cause for the belief that such interference with the course of justice was likely to occur. and if the accused was released"

and that mere assertion by the police was not enough. Mzavas J. further noted that it was for the prosecution to satisfy the court that the granting of bail would be detrimental to the interest of justice by supporting their fears which are merely hypothetical unless and until substantiated. It is,my submission that the decisions of JAFFER -v- REPUBLIC[13] and PANJU -v- REPUBLIC[12] are the correct ones to be followed, since this is the kind platitude with which everyone agrees. The prosecution must verify the truthfulness of the allegations and not merely object to an accused application for bail. If they cannot substantiate their allegations then they should be taken to have no reasons for objection. The need to treat unsubstantiated allegations as of no value becomes more acute when we realise that the police in Kenya always have an attitude that it would do the accused justice to have a first fling of jail life. The case of MUSOKE -v-

UGANDA[15] indicates the notority of police in Uganda which is not any different from that of the police in Kenya. In that case the accused had been charged with simple robbery. It alleged that he had "used personal violence" and he was granted bail of two hundred shillings with one surety of like amount. The state thereafter amended the charge to robbery with aggrevation, alleging that the accused had " used a deadly weapon, to wit a panga..." and successfully applied for bail to be rescinded. Thereafter almost three months elapsed without the accused being brought to trial. The accused again applied for bail. The court that heard the second application noted that it was not uncommon for police to amend charges and thereafter ask for cancellation of bail and that the motive was not always good. Kiwanuka C.J., questioning the validity of the cancellation had this to say

> "... who now told them that the accused used a panga? If indeed, he used one he must have used it on the compleinant...who should have stated so long before the case was fixed for hearing. Now the question is did he? If he did why was was the appjicant charged with a lesser offence in the first place? If he did not, then is it not an afterthought? "

The above case shows how the police are capable of abusing their powers to alter charges at the expence of a citizen's liberty. The case also shows the need to treat the police allegations with the greatest caution.

The likelihood of interference with wtnesses as a reason for not granting bail therefore needs a strict attitude by the court and bail should not be refused merely because of such allegations. There should be a proof of the allegation supported by an affidavit as was stated in PANJU -v- REPUBLIC[12].

THE STRENGTH OF THE EVIDENCE

In considering the strength of the evidence, the court will likely not grant bail if the evidence against the accused is strong. On the other hand if the evidence is weak then there is likelihood of bail being granted .But how the"strength" of the evidence is assessed begs a question. This is because the evidence will not

normally be available in court when it is considering bail applications except only in murder and treason cases where due to the preliminary enquiry one can assess the weight of the evidence. How does the court therefore arrive at a decision that the evidence is strong when there is no evidence available to the court, especially if it is the the accused's first apperance in court. If the court is considering bail on committal for trial the there is sufficient evidence because the trial has been conducted but not when the accused is first brought to court.

It may be argued that the number of witnesses might give an idea of the strength of the evidence but quality does not always go with quantity- there could be many witnesses whose evidence is not worth much. It is also a common practice among the police that when they are asked the number of witnesses, they"inflate" the figure for the magistrate to think the prosecutor will establish his case. At trial the number would have been reduced drastically.

The above consideration as it is now is insufficient, It should be restricted to only cases where preliminary enquiry is conducted, or when the accused is asking for bail before sentencing but after committal, because there is no"strength" to be determined on the first day of the accused's appearance in court.

THE NATURE AND SERIOUSNESS OF THE OFFENCE

Refusal to grant bail because of the nature and seriousness of the offence is based on the assumption that the more serious the offence charged, the stronger the temptation to abscond. The courts work on a presumption that the more serious the offence, the smaller is the risk that can justifiably be taken either of the defendant's absconding or his committing offences similar to that with which he is charged. The court in this case has regard to the likely sentence if the accused is convicted on the justification that the accused's perception of the likely consequences of a conviction may be expected to have a considerable influence on his relation to bail.

The presumption that the more serious the offence the stronger the temptation to abscond is erroneously based since it cannot be said that after an accused is charged then that establishes his guilt.The

constitution clearly provides that an accused person should presumed to be innocent until proved otherwise. When the constitution said a person was innocent until proved guilty the system owed that person no less than to treat him as if he were innocent until he was proven guilty. The consideration of the seriousness of the offence should not therefore even arise, because on the face of it it assumes that every accused person is guilty of the offence he is charged with.

In any case when the Legislature provided that only treason and murder were not bailable they must have had regard of the "seriousness"of the offence and hence reached a decision that only murder and treason were more serious than all other offences. By implication all the other offences were bailable. Why therefore should courts consider the nature and seriousness of the offence?

It is also argued that the nature of the offence might indicate that an accused person might commit another offence. Speaking on the "nature"of an offence Atkinson J., in the case of PHILIPS[16] with particular reference to house breaking said that it was a crime which would probably be repeated if the accused was released on bail. He went on to say,

> "To turn such a man loose on society until he has received his punishment for an offence which is not in dispute, is in the view of the court, a very inadvisable step to take. The court wish justices who release on bail young house breakers that in 19 out of 20 it is a very wrong step to take !!

Again this is an area of speculation, for how can one tell with certainty that the accused due to the nature of the charge is likely to commit another offence? In any case this speculation amounts to pre-judging the issue,since the court is already convinced that the accused has committed the offence and is now speculating on "another". In countries like America such a speculation is unlawful. The american magistrate is not entitled to speculate on the possibility of the accused committing crimes while on liberty. The prosecution has to prove the case beyond reasonable doubt and no inference can be drawn from mere arrest.Recognition of the presumption of innocence involves no speculation as to whether the accused will infact be convicted. It does involve a recognition that his procedural right

cannot, consistent with due process be determined with reference to such speculation. Furthermore presumption of innocence is incompatible with speculation as to whether the accused would be likely to repeat the offence or would be a menace to the community or would tamper with witnesses.

Moreover, it is wrong to justify pre-trial detention on the ground that the accused might commit a serious offence, otherwise it would be legitimate to lock up any member of the community whom it was thought might commit a serious offence. The only difference is that the accused person is charged with an offence.

The accepted method of preventing the commission of offences is the threat of trial and punishment but not prior confinement. Prior confinement may be essential in the interests of public safety in a narrow class of serious cases particularly those involving threats to life or limb. But even the fact that the accused has committed a serious offence does not establish that he is likely to commit a similar offence in the relatively short period leading up to his trial. Murder as a result of a family quarrel for instance, is unlikely to be repeated shortly after but a burglar who knows he is guilty may " do another job or two" before he " goes down " and yet murder is more serious than burglary. The nature of the offence therefore does not indicate that the accused is likely to commit another offence. It is in any event extremely difficult if not impossible to predict with any degree of certainty who will and who will not commit further offences whilst on bail.

It is therefore only proper that" the nature and seriousness of the offence" should not arise in considering whether to grant bail . If the police feel an accused person might abscond then they must base their allegation on some other reason such as " the accused has absconded before " and not because " the offence is very serious ". The fear of absconding should not weigh much upon the court's decision since failure to appear is a distinct criminal charge.It is also a fact that many appear because they know they will probably be caught if they flee; or because the evidence of flight is relevant and admissible at trial to prove guilt; and finally, they know that the probability of acquittal will substantially diminish if they flee.

A liberal attitude towards the grant of bail, it is admitted, may result in a slightly higher number of absconding but where imprisonment is inappropriate as a punishment of guilt, it is still inappropriate as a means to ensure attendance. Bail should therefore be made the rule rather than the exception.

THE ANTECEDENTS OF THE ACCUSED

Antecedents include the accused's previous convictions and the whole of his past history. If the accused has abused grant of bail before or is already on bail in respect of another charge, these facts, will count strongly against him. In MICHAEL WAWERU -v- REPUBLIC [17] the accused's advocate applied for bail but the prosecutor objected on various grounds including the fact that the accused was already out on bond in respect of another charge . This therefore showed that the accused was capable of abusing grant of bail and he was accordingly not granted.

Another factor that is taken into account is whether the accused has turned up on many previous occasions. If the answer is in the affirmative then he is likely to be a good bail risk.

It is also argued that an accused's previous convictions will indicate the propensity to commit further offences and hence he should not be granted bail. But it is hard to reconcile this proposition with reality. The fact that an accused has been convicted before should not spell his doom because he could have committed the offence due to a temporary lapse in crime. In any case the antecedents of the accused are normally not common until the time of sentencing when the prosecutor produces a certificate of convictions and before then, there is nothing that the court can really look at.

Another problem that is likely to occur is who is to enquire into the antecedents of a man applying for bail. In the case of O'CALLAGHAN [18] the court ruled that it was the duty of the magistrate to carry out the enquiry. But it is a delicate matter. If the magistrate asks the prosecution whether the accused has any previous convictions, he lays himself to an allegation that he will be prejudicial at trial! If the evidence is admitted of previous convictions then it is only proper that the magistrate who hears such evidence should not be the trial

magistrate. If on the other hand the prosecutor of his own volition offers information on the point, he should not provide detailled information.

A further problem that is apparent in the issue of bail is the method usedin to fix the amount of bail. The only guide provided in the C.P.C. is"reasonablgness" What is reasonable is bound to differ depending on different magistrates. The practice however indicates that bail will be fixed with regard to the gravity of the offence. If an accused person is charged with stealing goods of a certain amount, then the security required by the court will be almost the value of the stolen goods although this again involves an erosion of the presumption of innocence. This is because by fixing the amount of bail on the value of the goods allegedly stolen implies that the accused is guilty of the offence he is charged with.Futhermore, the above criteria is still unfair since the police are in the habit of exaggerating the value of the goods - it is obvious that they always give a higher figure than the actual value of the goods.

What is even worse is the fact that magistrates at times do not seem to bear in mind the value of the allegedly stolen property. In JOSEPH KIMOTHO MUGAMBI and MARY MBUKI MUGAMBI[19] the two had been charged with stealing 870 crates of beer, the property of Kenya Breweries. The value of the beer was estimated at K. Shs 126,286/50. The magistrate in granting bail required each accused to sign a bond of 50,000/= and each to have one surety of like amount. The security demanded amounted to 200,000/= which was almost double the value of the 870 crates of beer.

In addition it is a common practice among magistrates to fix an impossible bail to assure that there will be no delay in the accused's experience of his deserved punishment. Their philosophy is that it will do the offender good to have an immediate "taste of jail". This is clearly a misuse of bail that calls for reform.

The need for reform is even more urgent because noneof the tests applied in deciding whether to grant bail provide no uniform answer to the question whether bail should be granted. It is sometimes granted in the most serious cases and denied in the less serious cases. It is also a problem to tell the certainty of an accused's

conviction because not all facts are available to the magistrate when he is considering the grant of bail . The end result is that magistrates exercise their discretion to grant bail according to unclear criteria. The outcome is that bail is set in a such a routinely haphazard fashion that what should be an informed, individualised decision is infact largely a mechanical one in which the name of the charge rather than all the facts about the accused dictate the amount of bail.

It is my submission that there should be a liberal grant of bail and although this may result in a higher numberbof people absconding, it should override the extra work that will have to be done by the police in trying to find the culprits.It is also admitted that speeding up of criminal cases will help to alleviate the present injustice. This would require an increase of personnel and the issue of bail would not even arise.Since we also saw at the beginning of this chapter that the chief consideration is whether the accused will turn up for trial, the criteria to determine this should not be based on property. Rather, the court should look at whether the accused has permanent residence in the area or country because to continue to demand property amounts to discrimination. No system of equal justice can tolerate this sort of discrimination against the poor if reasonable alternatives exist. However a discussion of the reforms is reserved for chapter four.

CHAPTER III

THE EFFECTS OF NOT GRANTING BAIL

Refusal to grant bail plays a significant part in disadvantaging the accused person in several ways. In the first place the outcome after trial is likely to be "guilty" rather than "not guilty" Secondly it cannot be denied that the accused person suffers psychologically; thirdly the accused being in custody cannot support his family; and finally the government has to maintain the accused persons in custody at the expence of the public. Each of the above factors will be considered in turn in the following discussion.

The refusal to grant bail affects the accused's likely outcome in that the fixing of bail (even in a modest amount in the case of an indigent accused) may have the practical effect of denying him release. This is particularly the case for the lucky accused in custody who can afford the services of a lawyer;his maximum utilization of the lawyer's services is greatly hampered with. This is because an imprisoned man has no opportunity to cooperate fully with his counsel and is less favourably placed in getting advice from his counsel. Moreover being in custody it is unlikely that the lawyer would be willing to visit the police station as often as possible as he himself would visit the lawyer. Furthermore an accused person in custody cannot investigate his case to the maximum. The advocate cannot bast trace witnesses as the client. The client being the person with most at stake (especially if he happens to be innocent) is naturally likely to apply himself even more than a lawyer to the task of finding the evidence that will secure his acquittal. The end result is that the accused's defence is inadequate and the chances of acquital are minimised.

It is also a fact that being in custody the accused person cannot in any way earn money that is still necessary for his right to appeal.

In comparing the likely outcome of an accused ~~in custody~~at liberty and that of an accused in custody, we find that the la tter's sentence is apt to be more severe than that of an accused person at liberty. The appearance and demeanor of a man who has spent days or weeks in jail leflects his recent idleness, isolation and exposure to the jailhouse crowd.

jail house crowd. He is apt to be unshaven, unwashed, unkempt and unhappy as he enters the courtroom under guard. How subtly do these factors inter-weave with all the legitimate but unknowable elements of the contencing decision ? A magistrates right to base findings of fact on witnesses "demeanor" is unchallenged. It cannot therefore be said that the magistrate is immune from the same reflex action in sentencing.

There is also the psychological effect. An accused's psychological make up is likely to be a mixture of anxiety, depression, hostility and bitterness. And for the accused person who turns out to be innocent, he suffers humiliation and injury to his morale.Partly because of the indignity of being incarcerated unnecessarily and partly because of overcrowded prisons the British Parliament passed the bail act of 1976. This was the first attempt to control bail decision. The Act, inter alia, created a general right to bail. The realisation by the British Parliament of the need to reform the system of bail was occassioned by the injustice that bail decisions created. The law that relates to bail in Kenya was "imported" substantially as it was in Britain. It cannot therefore be said that as far as Kenya is concerned the law that relates to bail is satisfactory whereas the same law has been found to be lacking somewhere else.

In still considering the effects of refusal to grant bail, one finds a sharp contrast creditwise between an accused who was at liberty and that who was in custody. This is because the former has proved trustworthy by turning up and he therefore stands a better sentence.

It is also true that public interest is served if prisons are not clogged with untried persons. At the beginning of 1976 the total figure of unconvicted persons on remand in custody in Britain was 3,500 persons.[20] It is submitted that the figure is even higher in third world countries. In Kenya, at the end of 1973 there were 4,051 unconvicted persons and this constituted about 15% of the total prison population.[21] The more people there are in prison, the more money is spent in keeping them there.

Between the years 1977/78 the recurrent expenditure in the Kenya Prisons amounted to K. Pounds 4,245.0 while the estimate on development was K. Pounds 255.0 giving a total of K. Pounds 4,500.0.[22] The government obtains this money from the public and it is therefore for the latter's interest that as few people as possible should be kept in prison.

Another effect is the fact that there are chances that an accused person may loose his job (if he had one) because of being locked up in custody for a long period. The end result is that an accused's dependants suffer. It is therefore not a surprise to learn that innocent persons whose only "offence" is that they have been charged plead guilty rather than suffer in custody while awaiting trial.

The above reasons justify why pre-trial detentions should be avoided, and especially in cases not punishable by imprisonment. Cases not punishable by imprisonment ought to have an automatic right to bail. But to continue to demand money particularly in such cases is still unfair. This is because many of the accused persons are penniless and have no choice but to languish in prison despite the fact that they have been granted bail. Although the law is supposed to protect the rich and the poor, the institution of bail illustrates most dramatically that the rich receive preferential treatment under our system of criminal justice. Bail practices provide the clearest examples of economic discrimination in the criminal process. Affluent accused persons are not presumed to be more innocent than the poor accused persons yet the poor who are unable to purchase their ffeedom languish in the often cruel environment for months or even years awaiting trial, while the wealthier accused buy their liberty and remain free to pursue their economic ventures. The familiar adage "the rich get richer and the poor get poorer" seems applicable when bail practices are scritinized. There can be no justice where the kind of treatment a man gets depends on the amount of money he has. As earlier stated, no system of equal justice can tolerate this sort of discrimination against the poor if reasonable alternatives exist.[23] This is even more why the law of bail in Kenya should be reformed.

CHAPTER IV

RECOMMENDED REFORMS AND CONCLUSION

In "The Manhattan Bail Project" [24], it is noted that the bail system has, almost from the time of its inception, been the subject of dissatisfaction. Yet proof of the need to reform has produced little in the way of fundamental changes in countries like Britain or America, and even worse, has produced no change at all in Kenya. The result is that committing magistrates continue to misundestand or misapply the criteria for pre-trial release; continue to make bail determinations on the basis of skimpy and unverified facts, and further, a substantial number of accused persons who are not yet convicted but only charged are denied release simply because they are poor.

In Britain where the provisions of bail are similar to those in Kenya, there has been an attempt to reform the law of bail by the passing of the Bail Act 1976, which created a general right to bail. It is my contention that Kenya should not remain adamant and "stick" tounsatisfactory provisions which at the moment serve to defeat the purpose of bail.The necessary reforms are the subject of this chapter.

Looking at the criteria courts consider for the granting of bail, it is evident that some do not justify the granting of bail while others need modification. In considering the " nature and seriousness of the offence" the court, as it were, assumes that all persons charged with an offence are guilty of that offence, otherwise why should they consider the gravity of the offence charged? This consideration,by supposing that all accused persons who have been charged are guilty, erodes the constitutional presumption of innocence. The constitution clearly provides that an accused person is to be presumed innocent until proved guilty or until he pleads guilty.[6] To consider therefore " the nature and seriousness of the offence " is, to say the least, pre-judging the issue. It were better if this consideration was removed from the C.P.C. because as it is at the moment, it violates the presumption of innocence.

Another presumption that serves no useful purpose is the " strength of the evidence." This is because there is no evidence available befo-

requirement may be placed that he returns to cutody after specified hours.In this way it cah be said that the accused will suffer less injustice while he is awaiting his trial.

It has also been pointed out previously that the requirement for money or property as an alternative to bail is discriminatory against those who have neither money nor property. The law would be providing no justice if it oppressed the have-nots in society. In this regard the recommendations of the Vera Foundation[26] could serve as an alternative to the requirement of an accused having to deposit some money or show the amount of property he has before he is granted bail. The Vera Foundation was a project undertaken by staff members and law students of the University of New York. It recommended a standard form of questionnire detailing the accused's stability and roots in the community.[26] The questionnaire will provide information about the accused's employment, where he lives and for what length of period, the relatives he is in contact with and also provide information about an accused's past criminal record.It is then through this information that the accused's eligibility for release by reference to points scored based on community roots can be determined. If he has more than specified points then the accused colifies for bail. In this way all accused persons will have the same treatment at law rather than have those with wealth getting preferential treatment because of the " power " of money that they pocess.

In addition, it is important that each case be considered individually on its own merits. It should be immaterial that the accused has committed other offences prviously. In any case the fact that the accused has committed other offences before is not evidence to show that he is guity of the offence.with which he is presently charged. The law requires that he is to be presumed innocent until proved otherwise.

As regards the magistrate's discretion which at the moment is exercised through some obscure principles, there is need for laid down guidelines upon which this discretion should be exercised.

Moreover the process of bail determination needs to be more responsive to the seriousness of the matter.It is not just enough to take an average of 2 minutes to decide whether to grant bail or not.

On the contrary there should be investigations to establish the validity of allegations which would be a basis for objections to grant bail. The magistrates must satisfy themselves that any allegations against accused persons truly exist by questioning the police. The latter might be reluctant to disclose details in open court where the press and the friends of the accused could gain information that could hamper the police in their work. Magistrates should therefore be given power to hear bail applications in camera at the request of either the prosecutor or the accused.

It is also true that the airing of arguments publicly, as to whether the accused should or should not be granted bail often prejudices the prospects of a fair trial. To maintain the interest of justice, the law should be reformed to the effect that a magistrate who hears the application should not be the trial magistrate.

It is further important that magistrates should give reasons for the refusal to grant bail. It is only then that the party whose liberty is at stake can have a feeling of fairness.

But perhaps most important is the fact that the hearing of criminal cases need to be speeded. In that event the issue of bail would not even arise. This will mean an increase of the personnel and this can only be done by the judiciary.

It is my submission therefore that there is an urgent need for reform of the law relating to bail along the lines hereabove suggested.

FOOTNOTES

[1] S.123-133 C.P.C (Chapter 75, Laws of Kenya)

[2] Develin, Criminal Court and Procedure(2nd. Ed. 1967) Pg. 66

[3] Borwn, Criminal Procedure in Uganda and Kenya(2nd. Ed. 1970) Pg. 27

[4] R -v- ROSE (1895-1899) All ER Pg. 351

[5] S.23 C.P.C.

[6] The Kenya Constitution S. 72(2) (a)

[7] GIKAYE -v- REPUBLIC (1971) 29 G.L.R. 286

[8] At the first Conference of Kenya Magistrates' Association, Nairobi. 29th. October - 1st. November, 1976.

[9] STATE -v- KONIGSBERG 33N.J. 367.

[10] Wayne, Bail Reform in America (1st. Ed, 1976).

[11] R -v- ESAU JAMES AND DANIEL OKOTH ; criminal case No. 4190 of 1981 (Unreported).

[12] PANJU -v- REPUBLIC E.A.L.R.(T) (1973) 282,283

[13] JAFFER -v- REPUBLIC E.A.L.R.(T) 1973 283

[14] BHAGWANJI KAKUBHAI -v- R I.T.L.R. 143

[15] MUSOKE -v- UGANDA E.A.L.R. (U) (1972) 137

[16] PHILIPS (1974) III J. p. 33

[17] MICHAEL WAWERU -v- REPUBLIC criminal case No. 528 of 1981(Unreported)

[18] O'CALLAGHAN (1966) I.R. 501

[19] R -v- JOSEPH KIMOTHO MUGAMBI AND ANOTHER CRIMINAL CASE No. 600 of 1981 (Unreported)

[20] Harris, The New Law of Bail (1st. Ed. 1978) p.1

[21] Republic of Kenya, " 1978 Prisons Annual Report on the Administration of

[22] Republic of Kenya," Development Plan 1974/78 part II" p.7

[23] These alternatives are to be discussed in the following chapter

[24] Ares, Rankin Sturz," The Manhattan Bail Project: An interim report on the use of pre-trial parole " 38 N.Y.U.L.R. 67 1963

[25]The Federal Bail Reform Act 1966, 18 U.S.C.A.

[26]See appendix for questionnair recommended

SOURCE: ANNUAL REPORT ON THE ADMINSTRATION OF PRISONS IN KENYA.

APPENDIX A

ADMISSIONS AND DAILY AVERAGE POPULATION FOR THE YEAR 1978
(EXCLUDING DETENTION CAMPS, BORSTAL INSTITUTIONS, Y.C.T.C. AND E.M.P.E.)

Station	1 Total Committals	2 Under Observation	3 Certified	4 Debtors	5 Safe Custody	6 Remands	7 Vagrants	8 Sentenced to imprisonment	9 Criminal Patients	10 3 years and over	11 18 months and under 3 years
Kitale Main	1,656	—	—	—	—	1,143	2	510	26	85	90
Kitale Remand	1,443	—	—	—	—	500	—	943	—	1	1
Narok	1,065	—	—	—	—	380	—	705	—	2	9
Kitale Annexe	—	—	—	—	—	—	—	—	—	—	—
Kapsabet	1,858	—	—	—	—	541	43	1,274	—	—	7
Lodwar	730	—	—	—	—	354	—	376	—	—	10
Kapenguria	1,098	—	—	—	—	179	—	919	—	1	6
Kericho	2,713	—	—	—	1	1,047	—	1,665	—	44	40
Kajiado	177	—	—	—	—	177	—	—	—	—	—
Athi River	37	—	—	—	—	—	—	37	—	—	—
Maralal	381	—	—	—	—	228	2	151	—	7	5
Nanyuki	1,301	—	—	—	—	477	—	824	—	—	14
TOTAL	116,683	14	2	31	14	59,092	347	57,197	—	2,359	2,562
Men	104,881	3	—	31	3	54,143	235	50,469	—	2,330	2,502
Women	11,723	11	2	—	11	4,873	112	6,725	—	29	60
Boys	75	—	—	—	—	75	—	—	—	—	—
Girls	4	—	—	—	—	1	—	3	—	—	—
TOTAL	116,683	14	2	31	14	59,092	347	57,197	—	2,359	2,562

APPENDIX B

ADMISSIONS IN 1978 (COMPARATIVE TABLE)

	1973	1974	1975	1976	1977	1978
(a)(i) Convicted men						
Number convicted	40,921	45,243	52,454	59,356	57,458	50,469
Daily average	15,509	16,772	18,731	20,349	18,255	19,640
(ii) Remands and/or safe custody						
Number of remands	59,653	76,039	74,668	70,979	59,010	54,218
Number of safe cust.	—	—	—	—	4	3
Total	59,653	76,039	74,668	70,979	59,014	54,221
Daily average for remands	3,371	4,030	4,705	4,728	4,579	3,839
Daily average for safe custody	—	—	—	—	11	8
TOTAL	3,371	4,030	4,705	4,728	4,590	3,843
(b)(i) Convicted women						
Number convicted	5,769	6,368	6,927	9,316	8,242	6,728
Daily average	558	581	616	883	725	698
(ii) Remands and/or safe custody						
Number of rem.	3,836	4,065	4,604	6,438	5,071	4,874
Number of safe cust.	—	—	—	—	—	11
TOTAL	3,836	4,065	4,604	6,438	5,071	4,885
Daily av. for rem.	178	183	223	226	230	239
Daily av. for s/cus.	—	—	—	—	—	1
TOTAL	178	183	223	226	230	240
(c)(i) Conv. men and women						
Number convicted	46,690	51,611	59,381	68,672	65,700	57,197
Daily average	16,067	17,353	19,346	21,238	18,980	20,338
(ii) Remand and/or safe custody men and women						
Number of remands	63,489	80,104	79,272	77,417	64,081	59,092
Number of s/cust.	—	—	—	—	4	14
TOTAL	63,489	80,104	79,272	77,417	64,085	59,106
Daily av. for rem.	3,549	4,213	4,928	4,994	4,809	4,074
Daily av. for s/cust.	—	—	—	—	11	9
TOTAL	3,549	4,213	4,928	4,994	4,820	4,083

APPENDIX C

SAMPLE QUESTIONNAIRE: MANHATTAN BAIL PROJECT

S	C
R1	N
R2	N
R3	N
R4	N
Ct.	A NA

*

1.Name ....last.....first....Q.No.....
2.Address..... .....
no. street apt.
.....
borough zone state phone
3.Date of int..... 4.Investigators.....
5.Ct. of Appr.....**
Docket no.....out.....ret.....
co b.....e.....

6.

Age	Description		Birthplace	FOREIGN BORN			
				Years in U.S.	Citizenship	Family in U.S.	English ability
	N S W	M F					S R W

7. Private lawyer..... Name.....
8. Co-defendants: (names).....Ages.....
9. What would you do if you got out on bail.....
10.For those not born in NY:How long in NY.....
11.For those born in NY:
Lived anywhere else.....Where.....When.....
12.Where lived: Apt. bld...1-fam.hse...hotel.....room hse...other...
13.no. rooms.....Rent.....How long there.....
14.Lived with:alone.....parents.....spouse.....
Others (name and relation).....
15.Where lived before.....How long.....
Lived with: alone.....parents.....spouse.....same as 14....
others.....
16.Now married:.....Since when.....no. children.....
Name and address spouse.....
Spouse work ..... Kind of job.....Place.....Phone.....
Relevant info....
17.Ever married or married before:.....no.times.....Date last.....
How terminated..... when.....no. chr.....
Relevant info.....
18.Parents living.....How often in touch.....
Relevant info.....
19.What relatives in city.....
Which one do you see most often.....
20.Working now.....(if not,go to no.23)

Company and address	Phone	Supervisor

Nature of work	How long on job	How get job	Weekly wage

APPENDIX C (Contd.)

21. Immediately previous job length.....Longest job length...
22. Work before:Immediately previous.....Longest.....
23.

Company and address	Phone	Supervisor

Nature of work	From	To	Reason left	Weekly wage

23. If unemployed:How long.....How do you support yourself.....
24.

last job and address	Phone	Supervisor

Nature of job	From	To	Reason left	Weekly wage

25. Immediately previous job length.....Longest job length.....
26. Work before:Immediately previous.....Longest.....

Company and address	Phone	Supervisor

Nature of work	From	To	Reason left	Weekly wage

27. Belong to any union.....Local.....
28. Registered with employment agency.....Name.....
29. Help support any-one.....no.....Name and address.....
How often contribute.....Amount.....Last contriburion.....
30. Other income: family.....govt. checks.....odd jobs.....other.....
31. Savings or insurance.....Bank.....
32. Debts.....
33. Arrested before.....no. convictions.....Time served.....
34. Probation or parole:ever.....violate.....now.....officer.....
Address.....Phone.....Court or prison.....
35. Bail ever set.....(If yes) How much: face.....cash....Collateral..
Raise it.....Who put up.....Show.....
36. Ever released without bail.....Show.....
37. Ever hospitalized for:
Medical.....Mental.....Drug.....

38.School last attended.....When.....Last grade.....
39.Service.....Draft status.....Branch.....Rank.....
From.....To.....Discharge.....
40.Have you called anyone.....Who.....
41.Have you any papers with you.....
42.Is there anyone we could call as a reference(employers,relatives, religious leaders, teachers, landlords, union, credit ref. etc.) (Space provided for detailed information.)

I agree to allow Vera Foundation to call the people listed immediately above if the foundation wishes to check my references.

Signature.....

* This box allows the Project personnel to record the various stages of progress with each interviewee."S"stands for those cases which are selected at random for the experimental,or"sample" group; "C" stand for control group.At stage"R1", the information obtained at the interview is evaluated to see if the case is worthy of investigation. "R2" stands for the evaluation made of the case after the information has been verified. A determination, on the basis of the complete record in the case, as to whether a parole recommendation should be given is made at stage"R3". At "R4", the decision is made on actually submitting the recommendation to the court. It is to be noted that between"R3" and "R4" events might take place which would affect the decision on submitting the recommendation. The most frequent of these events is the apperance with defendant of private councel.

** The information in this box provides an accurate record of when the questionnaire goes out and returns, i.e., how long the interview takes, and when the verification (checkout, "co") begins (b) and ends (e).

APPENDIX D

ESCAPES- 1978

	TOTAL ESCAPES 1977		CONVICTED		UNCONVIC.		OTHERS		TOTAL		GRAND TOTAL
ESCAPES	MEN	WOMEN	MEN	WOM.	MEN	WOM.	MEN	WOM.	MEN	WOM.	
From inside	7	-	7	1	8	2	-	-	15	3	18
From outside	103	5	118	-	2	-	-	-	120	-	120
TOTAL	110	5	125	1	10	2	-	-	135	3	138
Recaptures	57	4	60	1	2	2	-	-	62	3	65

DEATHS

(Breakdown of deaths in 1978)

DEATHS IN 1977			DEATHS IN 1978								
			CONVICTED		UNCONVIC.		OTHERS		TOTAL		GRAND TOTAL
MEN	WOM.	Total	MEN	WOM.	MEN	WOM.	MEN	WOM.	MEN	WOM.	
156	4	160	115	-	26	-	-	-	141	-	141

BIBLIOGRAPHY

Books

Brown, Criminal Procedure in Uganda and Kenya(2nd. Ed. Sweet and Maxwell, London, 1970)

Develin, Criminal Courts and Procedure (2nd. Ed. 1967)

Harris, The New Law of Bail (1st. Ed. Barry Rose(Publishers) Ltd. 1978)

Wayne, Bail Reform in America (1st Ed. University of California Press Ltd, 1976)

Articles

Ares Rankin,Sturz; "The Manhattan Bail Project: An Interim report on the use of pre-trial parole 38 N.Y.U.L.R. of (1963)"