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**COMMERCIAL BAIL BONDS IN NEW YORK CITY:
CHARACTERISTICS AND IMPLICATIONS**

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| | |
|---|-----|
| LIST OF TABLES | ii |
| LIST OF FIGURES | iii |
| ACKNOWLEDGEMENTS | iv |
| I. INTRODUCTION | 1 |
| A. Overview Of CJA Research On Bail Making In New York City..... | 1 |
| B. Forms Of Bail In New York | 2 |
| C. Prior Research On Bail Bonds In New York City | 3 |
| D. The National Context..... | 4 |
| E. Research Questions..... | 6 |
| II. THE DATASETS AND BOND SAMPLES | 7 |
| A. The 2005 And 2009 Datasets..... | 7 |
| B. The Bond Sample..... | 8 |
| C. The Bond Subsample With Supplementary Data | 10 |
| III. CHARACTERISTICS OF COMMERCIAL BONDS | 15 |
| A. Bail Amount Set At Arraignment And Face Amount Of Bond..... | 15 |
| B. The Principals: Insurance Company, Agent, And Indemnitor..... | 19 |
| C. Premiums And Other Fees | 27 |
| D. Collateral..... | 32 |
| 1. Types Of Collateral..... | 32 |
| 2. Amount Of Cash Collateral | 39 |
| 3. Collateral/Bond Ratios..... | 40 |
| E. Weekly Reporting Requirement | 47 |
| IV. ESTIMATING EFFECTIVE CASH DISCOUNTS | 51 |
| V. SUMMARY, CONCLUSIONS, AND IMPLICATIONS FOR POLICY | 57 |
| REFERENCES | 63 |

LIST OF TABLES

| | | |
|----------|---|----|
| Table 1 | Bail Making Outcomes In The Four Largest Boroughs Of New York City | 8 |
| Table 2 | Availability Of Supplementary Data For Bail Bonds | 10 |
| Table 3 | Sealing Of Cases By Availability Of Supplementary Data For Bail Bonds | 11 |
| Table 4 | Adult Conviction On A Criminal Charge By Availability Of Supplementary Data For Bail Bonds..... | 12 |
| Table 5 | Bail Amount Set At Arraignment For Cases In Bond Sample By Borough | 15 |
| Table 6 | Face Amount Of Bond Posted By Borough | 16 |
| Table 7 | Comparison Of Bail Amount Set At Arraignment With Face Amount Of Bond | 17 |
| Table 8 | Insurance Companies Underwriting New York City Bonds | 19 |
| Table 9 | Number Of Bonds By Bond Agent, Insurance Company, And Borough Of Prosecution..... | 20 |
| Table 10 | Number And Percent Of Bonds By Location Of Bond Agent And Borough Of Prosecution..... | 22 |
| Table 11 | Indemnitor-Defendant Relationship | 23 |
| Table 12 | Bond Agents' Fees By Bond Amount And Borough Of Prosecution..... | 28 |
| Table 13 | Type Of Collateral By Borough Of Prosecution..... | 32 |
| Table 14 | Type Of Collateral By Bond Agent..... | 34 |
| Table 15 | Type Of Collateral By Bond Amount | 37 |
| Table 16 | Amount Of Cash Collateral By Borough | 39 |
| Table 17 | Ratio Of Cash Collateral To Bond Amount By Borough | 40 |
| Table 18 | Median Collateral/Bond Ratio By Bond Size And Borough | 46 |
| Table 19 | Weekly Reporting Requirement By Bond Amount | 47 |
| Table 20 | Weekly Reporting Requirement By Borough | 47 |
| Table 21 | Weekly Reporting Requirement By Insurance Underwriter | 48 |
| Table 22 | Weekly Reporting Requirement By Bond Agent..... | 49 |
| Table 23 | Effectiveness Of Hypothetical Cash Discounts Of 50%, 60%, And 70% | 52 |
| Table 24 | Size Of Cash Discount By Borough, Comparison Of 2005 With 2009 | 54 |
| Table 25 | Bond Cases In Which The Defendant (Apparently) Could Have Posted Cash..... | 56 |

LIST OF FIGURES

| | | |
|-----------|---|----|
| Figure 1 | Types Of Pretrial Release, Comparison Of National And New York City Data | 4 |
| Figure 2 | Bonds As A Proportion Of Bail Releases By Borough..... | 9 |
| Figure 3 | Bail And Bond Amounts | 16 |
| Figure 4 | Relationship Of Bond Amount To Bail Set At Arraignment | 17 |
| Figure 5 | Geospatial Relationships Among Agent, Indemnitor, And Courthouse | 25 |
| Figure 6 | Level Of Bond Fee By Borough, Bond Company, And Bond Agent..... | 31 |
| Figure 7 | Type Of Collateral By Borough Of Prosecution..... | 33 |
| Figure 8 | Type Of Collateral By Bond Agent..... | 36 |
| Figure 9 | Type Of Collateral By Bond Amount | 37 |
| Figure 10 | Median Bond Amount By Type Of Collateral And Borough | 38 |
| Figure 11 | Distribution Of Collateral/Bond Ratios By Type Of Collateral..... | 41 |
| Figure 12 | Median Collateral/Bond Ratio By Collateral Type And Borough | 41 |
| Figure 13 | Median Cash Collateral By Collateral Type And Borough | 42 |
| Figure 14 | Collateral/Bond Ratio By Borough..... | 43 |
| Figure 15 | Collateral/Bond Ratio By Insurance Underwriter And Bond Agent..... | 45 |
| Figure 16 | Median Collateral/Bond Ratio By Bond Size And Borough | 46 |
| Figure 17 | Percent With Weekly Reporting Requirement By Bond Amount | 47 |
| Figure 18 | Percent With Weekly Reporting Requirement By Borough | 47 |
| Figure 19 | Percent With Weekly Reporting Requirement By Insurance Underwriter | 48 |
| Figure 20 | Percent With Weekly Reporting Requirement By Bond Agent..... | 49 |
| Figure 21 | Effectiveness Of Cash Discounts Of 50%, 60%, And 70% | 53 |
| Figure 22 | Percent With Cash Alternative, Comparison Of 2005 With 2009 | 53 |
| Figure 23 | Percent Of Cash Alternatives With Discount Greater Than 50%, Comparison Of 2005 With 2009..... | 54 |

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The methodology, findings, and conclusions of the study, as well as any errors, are the sole responsibility of the author.

I. INTRODUCTION

A. Overview Of CJA Research On Bail Making In New York City

This report updates and expands upon a recent study of bail making by the New York City Criminal Justice Agency, Inc. (CJA), which found that bail bondsmen play a much larger role in New York City than they once did (Phillips 2010a, hereafter referred to as the “bail-making report”). The research revealed that bonds accounted for 15% of all bail releases in the study sample, and 21% of cases with bail set at \$1,000 or more.

The bail-making report presented data showing that over 750 commercial bonds were posted in the four largest boroughs of the City for cases with an arrest from July through September 2005. (The term “commercial bond” is used here to refer to an insurance company bail bond, written by a commercial bond agent.) That number results in an annualized estimate of about 3,000 bonds per year in the City, although the actual total is undoubtedly higher than that.¹ The majority of defendants in New York City are still released on recognizance (CJA 2010), and the majority of defendants who make bail do so by posting cash directly with the court. Still, the research showed that commercial bonds are by no means the rarity they once were.

Analyses presented in the bail-making report utilized defendant and case-processing data from the CJA database,² as well as form-of-bail data from the Office of Court Administration (OCA). The research examined the factors associated with making bail by cash versus bond, including the amount of bail set at arraignment, the courts’ use of cash alternatives, and time to release. Supplementary information collected by hand from cash bail receipts was presented pertaining to the sureties who posted cash bail for defendants, their relationship to the defendant, and geospatial relationships among the locations of the jail where the defendant was held, the bail-posting site, and the surety’s residence. Supplementary data describing characteristics of cash bail cases were presented citywide and for all four boroughs included in the research.

Comparably detailed information about bonds was also collected by hand from court papers filed by bail bondsmen, but when the bail-making report was in preparation this supplemental information for bond cases had been collected only for Brooklyn and Manhattan. The results, revealing striking differences between the two boroughs, were presented in the full report (Phillips 2010a) and summarized in the corresponding *Research Brief* (Phillips 2010b) with a cautionary comment on the preliminary nature of the conclusions. We promised to enlarge the number of cases with supplementary bond data citywide and to round out the borough comparisons by adding supplementary data from the Bronx and Queens in a future update.

This report provides that update with the presentation of supplementary bond data for all four of the largest boroughs and expands the analyses to consider the implications for bail setting suggested by the citywide data.

¹ Sample cases were tracked for a minimum of three months and a maximum of six months. Although we did not systematically collect data on bonds posted after December 31, 2005, we found several by chance. A more accurate annual estimate would have to include bonds posted more than 6 months following arraignment for cases arraigned early in the year, as well as bonds posted for arrests during the previous year. Also, Staten Island was not included in the data upon which this estimate is based, so complete citywide totals would be higher.

² CJA maintains an arrest-based database containing virtually all arrests within New York City. Each arrest is linked to defendant information from the CJA interview, criminal history data obtained from New York’s Department of Criminal Justice Services, arrest data from the New York City Police Department, case-processing outcomes from the Office of Court Administration for every court appearance through sentencing, and bail making dates from the New York City Department of Correction.

B. Forms Of Bail In New York

In setting bail, New York judges may specify not only the amount of bail, but also the form in which it may be posted. One common practice is to set a single amount, such as \$1,000, without specifying the form; in that situation, the defendant may post a bond for \$1,000 or cash in the whole amount (CPL §520.15.1). Alternatively, the judge may set bail in two amounts, written as, for example, \$1,000/\$500. In this illustration, the defendant may post a bond for \$1,000 or cash in the lesser amount of \$500—the *cash alternative*. Whether to set one (bond or cash) amount or a bond amount with a lower cash alternative is at the discretion of the court (CPL §520.10.2). There are no rules governing the size of the cash alternative, if one is set.

When cash bail is posted, the money is returned to the surety (the person posting the bail, who may be either the defendant or someone else) upon imposition of the sentence or other termination of the action. The bail money is returned, minus a 3% fee kept by the court when the defendant is convicted, if the defendant appears for all scheduled court appearances. If the defendant fails to appear for a court date, the bail may be forfeited and the entire amount kept by the court. If the case ends with a finding in favor of the accused with no forfeiture for nonappearance, the full amount is returned (NYS 2002).

Bonds posted in New York City are almost always commercial surety bonds, secured through the services of a bail bondsman, who acts as an agent of the insurance company that underwrites the bond. In New York, regulation of the insurance industry, including bond agents, is under the jurisdiction of the New York State Insurance Department. New York has a tiered rate system, starting with a flat fee of \$10 for bail of \$200 or less. For amounts over \$200, the fee is additive: 10% for the first \$3,000; 8% on the amount over \$3,000 up to \$10,000; and 6% on any additional amount over \$10,000 (NY Insurance Law §6804). For example, the fee on a \$15,000 bond would be \$1,160. This fee, or premium, paid to the bond agent is not refunded regardless of the outcome of the case. Bond agents usually also require that the defendant put up collateral, which is refunded at the termination of the case as long as there has been no forfeiture. Part or all of the collateral may be retained by the bondsman, however, to cover expenses incurred in connection with the case.³

The courts have other options, including a secured bond (secured by personal or real property), a partially secured bond (secured by a 10% deposit made directly to the court, known elsewhere as a “deposit bond”), or an unsecured bond (not secured by any deposit or lien upon property) (CPL §520.10.1; CPL §500.10.17-19). These options are rarely used and were not found in the research sample. All of the bonds for cases included in the original report and in the current update were commercial surety bonds.

³ Investigative reporter John Eligon, in a recent *New York Times* article, described numerous miscellaneous fees charged by bondsmen, in addition to the premium, that can consume much or all of the cash collateral. One New York City bondsman requires clients to sign a contract that gives him the right to tack on fees for everything from missing a weekly check-in (\$250) to “bail consulting and research” (\$375 an hour) to revoking bail and returning the defendant to jail (thousands of dollars). The revocation fee gives the bondsman a financial incentive to revoke bail, and he is not obliged to justify the revocation to the court. Steven Nachman, head of the New York State Insurance Department’s frauds and consumer services bureaus, which are responsible for regulating the bail bond industry, was quoted in the article acknowledging that numerous complaints about excessive fees have led him to favor strengthening both the regulations and the department’s enforcement powers. At present the extra fees are apparently not illegal because, Nachman said, the law allows bondsmen to enter into private contracts with their clients (Eligon 2011).

C. Prior Research On Bail Bonds In New York City

The only prior research done by CJA on this topic was a study completed more than 30 years ago that focused on the sureties who posted bail for New York City defendants (Gewirtz 1980). Interviews were conducted with 109 sureties posting bail at corrections facilities. The proportion of bonds was small (9 bonds, or 8% of the total) but this cannot be interpreted as the proportion of all bail releases because the sample was not randomly selected. However, it is interesting that 14 of the sureties who posted cash bail told the interviewer that they had been turned down by bondsmen, mostly because they could not meet the requirements for collateral. It is impossible to know how many defendants were turned down by bondsmen during the study period, but these findings suggest that the number could be large in relation to the number of bonds actually posted.

Several studies of bail in New York City have also been carried out under the auspices of the Vera Institute of Justice. The earliest of the Vera studies was The Manhattan Bail Project in the early 1960s, at a time when the bail bond industry controlled virtually all pretrial release, and both cash bail and release without bail were rare (Ares et al. 1963; see also Rankin 1964). This was followed within the decade by a second study, which found that the growing use of cash bail had already greatly eroded the importance of bondsmen, although at that time commercial bonds still constituted the majority of bail postings (Schaffer 1970). By the time the last of the Vera bail studies was published 16 years later, the tables had completely reversed: virtually all bail postings were by cash, and commercial bonds had nearly disappeared (Sviridoff 1986).

Viewed in this light, CJA's recent finding about the current prevalence of commercial bonds signals a definite shift in direction: a substantial rise after decades of declining numbers. So rare twenty-five years ago that they were "of no policy relevance" (Sviridoff, *op cit.*), bonds have once again grown in importance and significance — not enough to regain dominance over pretrial release, but enough to warrant a closer look.

A fuller review and discussion of the Vera bail studies can be found in the bail-making report.

D. The National Context

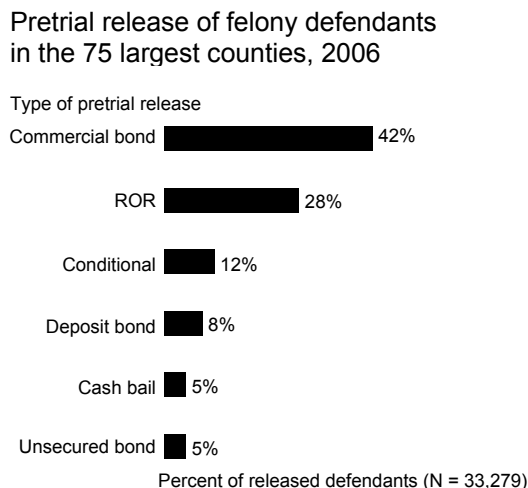
Since the early 1990s, the commercial bail bond industry in this country has been experiencing a period of huge growth. The latest biennial survey conducted by the Bureau of Justice Statistics (BJS) found that in 2006, commercial surety bonds were used in 42% of releases for felony defendants in the 75 largest counties, compared to 5% for cash bail (Figure 1). Nationwide, just over a quarter of releases in felony cases were on recognizance (28% ROR). The rest were conditional releases (12%), deposit bonds (8%), and unsecured bonds (5%). Deposit bonds are defined by BJS as bonds for which the defendant deposits a percentage, usually 10%, of the full bail amount. Unsecured bonds are those for which the defendant pays no money to the court but is liable for the full amount upon failure to appear.

Commercial bonds have been the predominant form of pretrial release in felony cases for over a decade (Cohen and Kyckelhahn, 2010; Cohen and Reaves, 2007). The relative proportions of release by commercial bond compared to ROR have flipped since BJS started keeping track: from 1990 through 1994, commercial bonds accounted for 24% of pretrial releases and ROR accounted for 42%; from 2002 through 2006, commercial bonds accounted for 42% and ROR for 26% (Cohen and Kyckelhahn 2010, not shown).

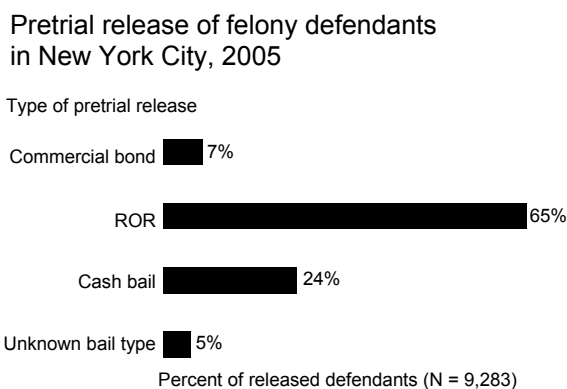
The picture in New York City looks very different. During a three-month period in 2005, nearly two-thirds of felony defendants were released on recognizance (65%), either at arraignment or at some later time before the case was disposed. Cash bail constituted 24% of all felony releases and commercial bonds only 7% (15% of all *bail* releases, but only 7% of felony releases *including ROR*). The remainder were all bail releases, but the form of bail (cash or bond) was not known (5%).

Conditional release (release under specified conditions, usually involving monitoring or supervision by a pretrial services agency), deposit bonds, and unsecured bonds are totally missing from the New York City releases. A few years ago CJA launched a trial supervised release program for felony defendants in Queens, but this option did not exist in 2005 for New York City judges in any borough. Deposit bonds and unsecured bonds *are* options (and have been since 1970), but they are rarely used and were not found among the study cases.

Figure 1
Types Of Pretrial Release
Comparison Of National And New York City Data



BJS, State Court Processing Statistics, 2006
Cohen and Kyckelhahn, 2010, Fig. 5, p. 6.
Data are for one month: May, 2006.



CJA, Third Quarter 2005 Dataset
Data are for three months: July through September, 2005.

In spite of the huge divergence between New York City and the rest of the country in release and bail setting practices, it appears that New York has not been immune to the national trend towards greater use of commercial bonds. The increase, from virtually no bonds in the mid-1980s to more than a seventh of all bail releases by 2005, is consistent with the direction, if not the scale, of the national trend.

This is a trend that is viewed with alarm by many in the pretrial justice field. The arguments against commercial bonds are many, and the American Bar Association (ABA) has been making them for almost 50 years. The ABA first recommended the abolition of commercial bonds in 1964, and that position was reiterated in the latest edition of its *Standards For Pretrial Justice* (ABA 2007). In the commentary for Standard 10-1.4 (f), which calls for the abolition of compensated sureties, four “strong reasons” are laid out. The first is that the defendant’s ability to pay a bondsman is unrelated to possible risks to public safety. (Although public safety is not a purpose for bail that is authorized under New York law, risk of failure to appear for scheduled court dates *is* an authorized purpose, and is equally unrelated to the ability to pay for a bond.) The second reason is that the decisions regarding which defendants will be released properly belong in the hands of the court, not in the hands of someone whose decision making is based on profit. The third reason is that bondsmen’s decisions are made in secret with no public record of the reasons for decisions. And the fourth reason is that “the compensated surety system discriminates against poor and middle-class defendants, who often cannot afford the non-refundable fees required as a condition of posting bond or who do not have assets to pledge as collateral. If they cannot afford the bondsman’s fees and are unable to pledge the collateral required, these defendants remain in jail even though they may pose no risk of failure to appear in court or risk of danger to the community” (ibid., p. 45).

These and other criticisms of the commercial surety system — fraud and other unscrupulous practices are often cited — have led to its abolition in four states: Illinois, Kentucky, Oregon, and Wisconsin. (In Illinois and Oregon, commercial bonds are not explicitly prohibited, but are not authorized by any statute.) The ABA notes this in the commentary on Standard 10-1.4 (f), and also includes the District of Columbia among U.S. jurisdictions where “bondsmen have been completely or substantially eliminated” (ibid., fn. 19, p. 46). Furthermore, the U.S. stands almost alone among the world’s countries in allowing commercial bail bonds. An international survey comparing bail systems around the world found only one other country (the Philippines) that allows their use (Devine 1991).

E. Research Questions

In the first part of the research, presented in the bail-making report, the primary question was the prevalence and distribution of bonds compared to cash bail among pretrial releases in New York City. In that phase of the research, we also asked about the factors associated with making bail by cash versus bond. In addition, for cases in which cash bail was posted, we examined characteristics of cases, defendants, and sureties. We asked the same sort of descriptive questions about cases in which bail bonds were posted, but at that time we had supplementary bond data for only two boroughs.

In the current (second) part of this research, the primary objective was to complete the presentation of descriptive data pertaining to bail bonds in all four of the largest boroughs of New York City. We were interested in the distributions of bond amounts, fees, and collateral for the bonds in the research sample, as well as information pertaining to sureties, agents, insurance companies, and check-in requirements. We also asked how these characteristics varied by borough. The information available on bond affidavits filed with the courts determined the specific items of data collected: we coded and recorded nearly everything on the bond affidavits. Unfortunately we could not collect anything *not* on the bond affidavits (for example, extra fees collected by bondsmen in addition to the premium).

A final research question addressed in the current report grew out of the concerns about commercial bonds expressed in the ABA *Standards* and elsewhere. If defendants were able to post cash bail rather than buying a bond, some of those concerns would be mitigated: cash bail is less costly for the defendant in the end (thus arguably less discriminatory against the poor) and takes the release decision out of the hands of bondsmen. So the question arises: how could cash alternatives set by the courts be devised so that they require no more cash to gain release than would be needed to buy a bond, accounting for variations in fees and collateral requirements?

II. THE DATASETS AND BOND SAMPLES

A. The 2005 and 2009 Datasets

The Third Quarter 2005 Dataset, Supplemented By Manually Collected Data Elements

A dataset of New York City arrests during the third quarter of 2005 (July 1 through September 30) compiled from the CJA database was used for nearly all of the analyses presented in this report. The current study excludes Staten Island and the community courts in Brooklyn and Manhattan and is further restricted to cases that were continued at arraignment in Criminal Court. The same defendant may be represented more than once in the dataset because of re-arrest during the study period.

Defendants who made bail on or prior to December 31, 2005, were identified using bail making dates electronically downloaded into the CJA database from the Office of Court Administration (OCA) and from the City's Department of Correction (DOC). The form in which bail was made is not among the data elements routinely collected in the CJA database, so in the first phase of this research project paper files were examined at a dozen different sites: Criminal and Supreme Courts in the Bronx, Brooklyn, Manhattan, and Queens; all three Department of Correction facilities in operation at the time of the study (Riker's Island, the Manhattan Detention Complex, and the Vernon C. Bain Center); and CJA's Bail Expediting Program (BEX), which operates in the Bronx and Queens. Information collected from paper documents was added by hand to the computerized research file.

Cash bail receipts from the courts and DOC facilities were the source of most manually collected information pertaining to cash bail, supplemented by documentation maintained by BEX. All cash receipts received by cashiers during the study period (July through December, 2005) were examined, but only the data for cases in the sample were added to the research file.

Source documents for information about bonds consisted of two documents found in defendants' case files stored in the courthouses: the Bail Affidavit contains information about the bond agent's fees, collateral, and other conditions, if any; and a second document ("Undertaking To Answer") contains information about the defendant and the insurance company. Case files were requested only for cases previously identified as having a defendant who posted a bond. Data from case files in Brooklyn and Manhattan were collected and added to the dataset prior to publication of the bail-making study. Data from case files in the Bronx and Queens were added in the current research.

Samples of all source documents are provided in Appendix A of the bail-making report (Phillips 2010a).

The 2009 Annual Dataset

A dataset of all arrests during 2009 was used to compare the prevalence and size of cash alternatives for cases in the research sample with the most recent data available. The 2009 annual dataset was compiled from elements in the CJA database in late 2010 for use in the *CJA Annual Report* and for other research purposes; it contains none of the manually collected supplementary data elements in the 2005 dataset. The analyses using the 2009 annual dataset were restricted to 54,368 cases with bail set at the Criminal Court arraignment in the four largest boroughs of New York City.

B. The Bond Sample

The focus of this update is on the 788 commercial bonds posted for defendants in the research sample, which comprised 15% of bail releases (Table 1). It is likely that additional bonds were posted during this period for cases with an earlier arrest, but these were excluded from the study. It is also likely that additional bonds were posted for cases in the research sample after the cutoff date of December 31, but these too are excluded.

Table 1
Bail Making Outcomes^a
In The Four Largest Boroughs Of New York City
(Arrests July – September 2005)

| | Bronx | Brooklyn | Manhattan | Queens | Total |
|--|------------------|------------------|------------------|------------------|------------------|
| Bond | 121 (13%) | 297 (20%) | 162 (11%) | 208 (15%) | 788 (15%) |
| Cash | 831 (87%) | 1,221 (80%) | 1,301 (89%) | 1,151 (85%) | 4,504 (85%) |
| Subtotal | 952 (100%) | 1,518 (100%) | 1,463 (100%) | 1,359 (100%) | 5,292 (100%) |
| Bail form unknown (as % of bail made) | 128 (12%) | 207 (12%) | 102 (7%) | 143 (10%) | 580 (10%) |
| Total bail made (as % of bail set) | 1,080 (33%) | 1,725 (38%) | 1,565 (38%) | 1,502 (49%) | 5,872 (39%) |
| Bail not made pre- disposition or prior to 12/31/2005 (includes post- arraignment ROR) | 2,219 | 2,769 | 2,592 | 1,583 | 9,163 |
| Total bail set (as % of continued) | 3,299 (43%) | 4,494 (42%) | 4,157 (38%) | 3,085 (40%) | 15,035 (41%) |
| Bail not set ^b | 4,449 | 6,110 | 6,825 | 4,543 | 21,927 |
| Total cases continued at arraignment | 7,748 | 10,604 | 10,982 | 7,628 | 36,962 |

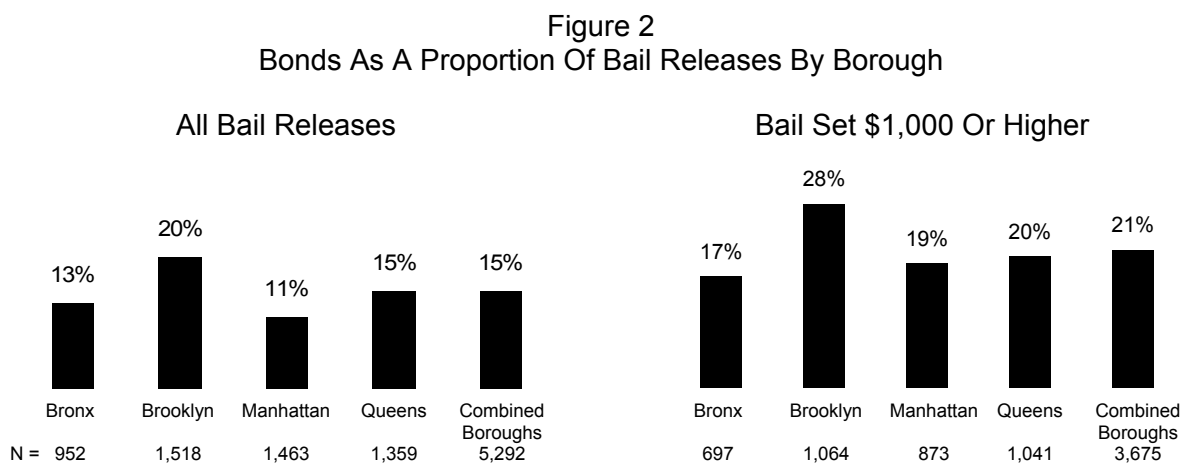
^a Bail outcomes for arrests within the study period were tracked until December 31, 2005. Bail posted during the study period for cases with an arrest earlier than July 1 or later than September 30, 2005, were not included. Data in this table were presented in the bail-making report (Phillips 2010a, Table 3), although the table in the bail-making report was organized somewhat differently. The number of cases in some categories differs slightly from Table 3 in the bail-making report because the additional data collected in this phase of the study led to the recategorization of a small number of cases.

^b This category includes cases with a defendant who was released on recognizance (ROR) or remanded at arraignment, as well as a small number of cases (n=112) with a warrant issued at arraignment for non-appearance following an arrest on a desk appearance ticket (DAT) and continued with no bail on the appearance of the return to court. (DAT cases with a warrant at arraignment and bail set at the next appearance are categorized according to what happened at the next appearance, when the defendant was actually arraigned.) Also, a handful of cases with ROR or remand at arraignment are included in the categories for “bail made” — rather than the category for “bail not set” — because bail receipts for these defendants were found among the documents collected manually. This happened in cases in which the initial bail setting occurred post-arraignment.

The proportion of bail releases made through posting a commercial bond — as opposed to posting cash directly with the court — was highest in Brooklyn (20%) and lowest in Manhattan (11%), as shown in Table 1 and illustrated on the lefthand side of Figure 2. Bonds comprised 15% of bail releases in Queens and 13% in the Bronx.

A more meaningful sense of the presence of bondsmen in New York City courts would be gained by excluding bail amounts less than \$1,000, because at the time of this research no bonds were written for lesser amounts (and there are no indications that this has changed). When bail amounts less than \$1,000 were excluded, bonds comprised 21% of bail releases overall, and 28% in Brooklyn. There was little difference between Manhattan and Queens once bail under \$1,000 was excluded (19% and 20% respectively), indicating that the lower overall percentage of bonds in Manhattan was largely the result of lower bail amounts there.

The results presented in Table 1 and Figure 2 correspond closely, but not exactly, to the results presented in the bail-making report. Updating the data resulted in the recategorization of a small number of cases.



The form of bail could not be identified for 580 cases in the sample for which data in the CJA database indicated that bail was made within the study period (Table 1). Attempts to obtain form-of-bail information from other sources were unsuccessful, usually because the case had been sealed in the absence of a conviction on a criminal charge. The cases missing form-of-bail data represented 10% of all cases in the research sample with a defendant who made bail prior to December 31, 2005. This category also included a handful of cases for which conflicting form-of-bail information was found among various sources and could not be resolved.⁴

⁴ Of the 580 cases with unidentified form of bail, 422 were sealed and could not be examined through our access to the OCA database. Of the remaining cases with unknown form of bail, 153 were not sealed but no bail making was found prior to the cutoff date, in spite of the fact that the CJA database (which gets its data from OCA) did show a bail making date prior to the cutoff date for these defendants. In the remaining 5 cases, OCA recorded the bail made as a bond but conflicting internal and external evidence suggested otherwise, so the form of bail was categorized as “unknown.”

C. The Bond Subsample With Supplementary Data

Supplementary data were obtained from case files for a large majority of the cases that had been identified as bond cases. Although the primary objective in examining case files was to collect detailed information about bonds, a case file was also requested for all unsealed cases with as-yet-unidentified form of bail, which enabled us to identify the form of bail for some. The 580 cases with unknown form of bail reported in Table 1 were those that remained unknown after this process had been completed.

A case file was requested from the court for each of the 788 bond cases, and 656 of the requested files were provided (Table 2, “**With** supplementary data”). That left 132 bond cases for which a case file was requested but was not provided (“**Without** supplementary data”). There was considerable borough variation in the availability of case files, from 94% “**With**” in Brooklyn (which also had the largest number of bonds) down to only 72% in Queens.

Table 2
Availability Of Supplementary Data For Bail Bonds

| Borough | Number (Percent) of Bonds | | |
|-----------|--|---|------------|
| | With supplementary data from case files | Without supplementary data from case files | Total |
| Bronx | 101 (83%) | 20 (17%) | 121 (100%) |
| Brooklyn | 278 (94%) | 19 (6%) | 297 (100%) |
| Manhattan | 127 (78%) | 35 (22%) | 162 (100%) |
| Queens | 150 (72%) | 58 (28%) | 208 (100%) |
| Total | 656 (83%) | 132 (17%) | 788 (100%) |

The primary analyses presented in this report will be restricted to the 656 bond cases with supplementary data, which represent 83% of all the bond cases identified during the research period.

Before moving on to those analyses, however, a brief examination of cases with and without supplementary data will enable us to assess if the cases included in the analyses might differ systematically from those that were excluded for lack of supplementary data.

Our request to be given access to sealed cases was granted only by the Brooklyn Criminal Court. In the other boroughs, and in Brooklyn Supreme Court, the request for sealed cases was not granted, and we were not expecting to receive case files for sealed cases from those courts. If sealing constituted the difference between cases with and without supplementary data, as expected, then the cases included in the analyses would differ in important ways from those that were excluded. The lower “**With**” rates in every other borough, compared to Brooklyn, are consistent with the assumption that we obtained data on sealed cases only in Brooklyn.

This assumption was tested in two ways. First, a measure of sealed cases was constructed from a manual search of the OCA database. When a case is sealed, OCA shields it from public view by displaying the message “Not On File” in response to searches using case or defendant identifiers; each of the 788 cases was searched in OCA and coded as sealed if “Not On File.” Table 3 presents the proportion of cases that appeared to be sealed using this measure, separately for cases with and without supplementary data. The results suggest that sealing was unrelated to whether supplementary data were obtained, as the proportion of sealed cases was actually higher among cases *with* supplementary data (25%) than without (20%).

Table 3
Sealing Of Cases
By Availability Of Supplementary Data For Bail Bonds

| Borough | Sealed Case Rate | | |
|-----------|---|--|--------------------|
| | With supplementary data from case files | Without supplementary data from case files | Total |
| Bronx | 1 (1%) N=101 | 0 (0%) N=20 | 1 (1%) N=121 |
| Brooklyn | 111 (40%) N=278 | 0 (0%) N=19 | 111 (37%) N=297 |
| Manhattan | 44 (35%) N=127 | 7 (20%) N=35 | 51 (31%) N=162 |
| Queens | 6 (4%) N=150 | 20 (35%) N=58 | 26 (13%) N=208 |
| Total | 162 (25%) N=656 | 27 (20%) N=132 | 189 (24%) N=788 |

In the Bronx and Brooklyn, not one sealed case was among the 39 cases lacking supplementary data in these two boroughs. In Manhattan and Queens there were some sealed cases among those without supplementary data, but they constituted only a minority of cases in the “without” category: 20% in Manhattan and 35% in Queens. Sealing did not seem to be the defining characteristic of the cases without supplementary data in any borough.

In fact, Queens was the only borough in which the proportion of sealed cases was higher among “without” cases (35%) than among “with” cases (4%). In every other borough, there were more sealed cases among the group for which supplementary data were obtained than there were in the group lacking supplementary data.

In Brooklyn we were expecting to obtain supplementary data for sealed cases, and that expectation at least was met: Brooklyn had the highest sealing rate (37%), and we obtained supplementary data for every sealed case that was on the list of requested bond cases in that borough. However, because we also obtained data for some sealed cases in every other borough, and because the majority of cases for which we did not obtain supplementary data were *not* sealed, we had to conclude that sealing did not differentiate the “with” from the “without” cases.

The second way in which we tested for differences between cases with and without supplementary data was to examine the factors that make a case *eligible* for sealing. It is possible that there was some slippage between sealing in reality and sealing in the OCA database, producing an inaccurate measure. Beyond that, the reasons for sealing a case are more important than the actual sealing in understanding how sealed and nonsealed cases differ.

There are three statutory grounds given in the Criminal Procedure Law for sealing a case: a favorable case outcome, such as dismissal or acquittal (§160.50); conviction on a noncriminal charge, i.e., a violation or infraction (§160.55); and a Youthful Offender (YO) adjudication at sentencing, which replaces a criminal conviction (§720.15). This leaves cases with an adult conviction on a criminal charge as the only cases *not* eligible for sealing. The exclusion of sealed cases, therefore, would mean that the excluded cases would be comprised predominantly of acquittals, dismissals, convictions on noncriminal charges, and YO adjudications.

To assess whether the cases with and without supplementary data differed in this respect, we compared the adult criminal conviction rates for the two groups of cases. The only convictions counted in our “adult criminal conviction” measure were convictions on a criminal charge with no YO adjudication. The results are presented in Table 4.

Overall, the adult criminal conviction rate was somewhat higher for cases with supplementary data (65%) than for cases without supplementary data (53%)—the opposite of what would be expected from the results presented in Table 3 but consistent with the assumption that “without” cases were more likely to be sealed than “with” cases. However, the majority of cases in both groups (with and without) ended in an adult criminal conviction, rendering them ineligible for sealing.

Table 4
Adult Conviction On A Criminal Charge
By Availability Of Supplementary Data For Bail Bonds

| Borough | Adult Criminal Conviction Rate ^a | | |
|-----------|---|--|--------------------|
| | With supplementary data from case files | Without supplementary data from case files | Total |
| Bronx | 73 (72%) N=101 | 9 (45%) N=20 | 82 (68%) N=121 |
| Brooklyn | 153 (55%) N=278 | 14 (74%) N=19 | 167 (56%) N=297 |
| Manhattan | 82 (65%) N=127 | 24 (69%) N=35 | 106 (65%) N=162 |
| Queens | 121 (81%) N=150 | 23 (40%) N=58 | 144 (69%) N=208 |
| Total | 429 (65%) N=656 | 70 (53%) N=132 | 499 (63%) N=788 |

^a The only convictions counted in the “adult criminal conviction” rate were convictions on an offense of misdemeanor or higher severity in which Youthful Offender status was not granted at sentencing.

The relationship between the adult criminal conviction rate and the “with/without” category was strongest in the Bronx and Queens, where conviction rates were much lower among “without” cases (45% and 40%, respectively) than among “with” cases (72% and 81%). While this relationship was in the expected direction, it still meant that a large minority of the “without” in both boroughs were *not* eligible for sealing, and did not differ from the “with” in this respect.

We expected to find a relatively lower conviction rate for “with” cases in Brooklyn compared to other boroughs because of our expectation that sealed cases would be included in that borough alone. At 55%, the Brooklyn rate was in fact the lowest for cases with supplementary data in any borough, suggesting that sealed cases were among them. However, we have no explanation as to why the conviction rate was much higher in Brooklyn among cases without supplementary data (74%); we would have expected the rates to have been similar for “with” and “without” cases.

Finally, in Manhattan there was little difference in conviction rates between “with” and “without” cases (65% and 69%, respectively). The majority in both categories were convicted.

These results suggest that the cases excluded from the following analyses because they were lacking supplementary data were a little less likely to have ended in an adult conviction on a criminal charge than the cases that are included in the analyses. However, this difference is not as great as would be expected if sealed cases had systematically been excluded from the case files to which we were granted access. Further, the lack of a strong overall relationship between criminal convictions and access to the case file is not accounted for by the provision of sealed cases in Brooklyn Criminal Court. This suggests that something much more random in nature — such as misplacement of the file — played a large role in determining which cases were not provided (especially in Brooklyn and Manhattan). This is good news for the research, which is more likely to be representative of all New York City bond cases than would have been true if sealed cases had been systematically excluded.

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III. CHARACTERISTICS OF COMMERCIAL BONDS

A. Bail Amount Set At Arraignment And Face Amount Of Bond

From this point forward, the “bond sample” refers to the subsample of 656 cases with supplementary data obtained from case files.

The amount of bail set at arraignment for cases in the bond sample is presented in Table 5. “Bail amount” refers to the lower cash alternative, if one was set: this is presented to show the minimum amount of cash the defendant needed to gain release at arraignment, although by definition none of the defendants in this bond sample posted cash bail.

Overall, the mean bail amount set at arraignment was \$11,664, with amounts ranging from \$1,000 to \$500,000. The overall median was \$5,000, which means that half of the bond cases had bail set at or below \$5,000, and half at or above \$5,000. About a third (35%) had bail set at \$2,500 or less, and 71% had bail set below \$10,000. There were 8 cases (1% of the bond sample) with bail set at arraignment above \$100,000.

Bail amounts for bond cases in Queens were higher than elsewhere in the City by every measure. Both the mean (\$21,717) and the median (\$7,500) bail in Queens were higher than in any other borough, and the highest bail set in the City (\$500,000) was in Queens. Additionally, only 51% of bail amounts in Queens were below \$10,000, compared to 66% or higher in every other borough.

Brooklyn had the lowest mean (\$7,081) and—along with the Bronx—the lowest median (\$3,500). In Brooklyn, 81% of bail amounts in bond cases were below \$10,000, the highest proportion found in any borough. The proportion of cases with bail set at \$1,000 was also considerably higher in Brooklyn (13%) than elsewhere (2% to 7%).

Table 5
Bail Amount^a Set At Arraignment For Cases In Bond Sample
By Borough

| | Bronx | | | Brooklyn | | | Manhattan | | | Queens | | | Total | | |
|----------------------|-----------|------|------|-----------|------|------|-----------|------|------|-----------|------|------|-----------|------|------|
| | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. |
| \$1,000 | 7 | 7% | 7% | 37 | 13% | 13% | 3 | 2% | 2% | 3 | 2% | 2% | 50 | 8% | 8% |
| \$1,001 – \$2,500 | 33 | 33% | 40% | 84 | 30% | 44% | 28 | 22% | 24% | 33 | 22% | 24% | 178 | 27% | 35% |
| \$2,501 – \$5,000 | 32 | 32% | 71% | 78 | 28% | 72% | 42 | 33% | 57% | 32 | 21% | 45% | 184 | 28% | 63% |
| \$5,001 – \$9,999 | 7 | 7% | 78% | 25 | 9% | 81% | 11 | 9% | 66% | 8 | 5% | 51% | 51 | 8% | 71% |
| \$10,000 – \$20,000 | 11 | 11% | 89% | 37 | 13% | 94% | 28 | 22% | 88% | 46 | 31% | 81% | 122 | 19% | 89% |
| \$20,001 – \$40,000 | 6 | 6% | 95% | 11 | 4% | 98% | 8 | 6% | 94% | 16 | 11% | 92% | 41 | 6% | 95% |
| \$40,001 – \$100,000 | 4 | 4% | 99% | 5 | 2% | 100% | 7 | 6% | 100% | 6 | 4% | 96% | 22 | 3% | 99% |
| over \$100,000 | 1 | 1% | 100% | 1 | <1% | 100% | 0 | — | 100% | 6 | 4% | 100% | 8 | 1% | 100% |
| Total | 101 | 100% | | 278 | 100% | | 127 | 100% | | 150 | 100% | | 656 | 100% | |
| Mean | \$10,193 | | | \$7,081 | | | \$10,994 | | | \$21,717 | | | \$11,664 | | |
| Median | \$3,500 | | | \$3,500 | | | \$5,000 | | | \$7,500 | | | \$5,000 | | |
| Maximum | \$200,000 | | | \$150,000 | | | \$100,000 | | | \$500,000 | | | \$500,000 | | |

^aThe bail amount is the cash alternative when two amounts were set.

(Column totals may not equal 100% and cumulative percentages may not equal the sum of previous percentages because of rounding.)

The face value of the bond posted by defendants in the sample was not necessarily the bail amount shown in Table 5; the two were identical only in the absence of a cash alternative, and only if there was no change in bail prior to the time the bond was posted. However, the data presented in Table 6 show that the distribution of posted bond amounts was actually very similar to the distribution of bail amounts set at arraignment. The overall mean bond amount (\$12,410) was a little higher than the mean bail amount set at arraignment (\$11,664, Table 5) but the medians were the same: \$5,000. The only borough with a higher median bond amount, compared to the median bail set at arraignment, was Brooklyn: \$5,000 was the median bond amount (Table 6), compared to \$3,500 bail set at arraignment in Brooklyn (Table 5).

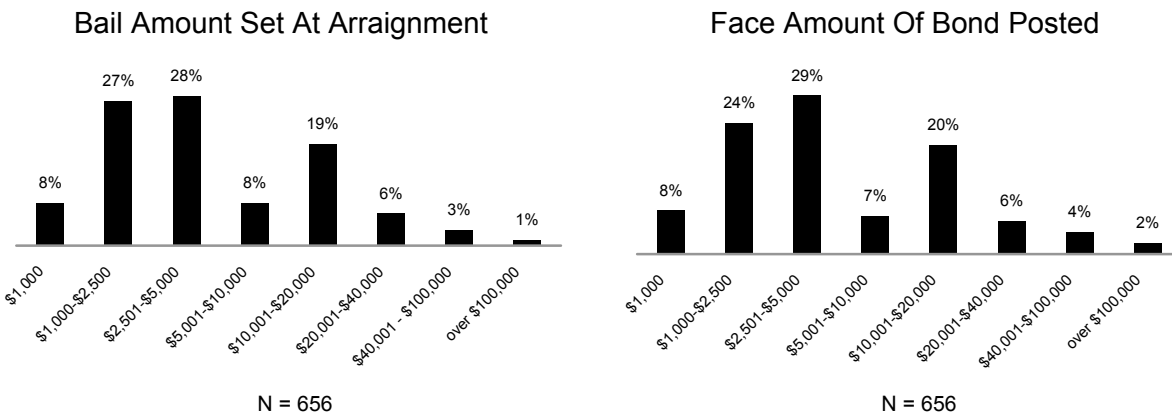
Table 6
Face Amount of Bond Posted By Borough

| | Bronx | | | Brooklyn | | | Manhattan | | | Queens | | | Total | | |
|----------------------|-----------|------|------|-----------|------|------|-----------|------|------|-----------|------|------|-----------|------|------|
| | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. |
| \$1,000 | 7 | 7% | 7% | 37 | 13% | 13% | 4 | 3% | 3% | 5 | 3% | 3% | 53 | 8% | 8% |
| \$1,001 – \$2,500 | 32 | 32% | 39% | 70 | 25% | 38% | 24 | 19% | 22% | 30 | 20% | 23% | 156 | 24% | 32% |
| \$2,501 – \$5,000 | 33 | 33% | 71% | 87 | 31% | 70% | 41 | 32% | 54% | 32 | 21% | 45% | 193 | 29% | 61% |
| \$5,001 – \$9,999 | 8 | 8% | 79% | 19 | 7% | 88% | 12 | 9% | 64% | 9 | 6% | 51% | 48 | 7% | 69% |
| \$10,000 – \$20,000 | 10 | 10% | 89% | 47 | 17% | 94% | 31 | 24% | 88% | 44 | 29% | 80% | 132 | 20% | 89% |
| \$20,001 – \$40,000 | 6 | 6% | 95% | 11 | 4% | 97% | 7 | 6% | 94% | 17 | 11% | 91% | 41 | 6% | 95% |
| \$40,001 – \$100,000 | 4 | 4% | 99% | 6 | 2% | 99% | 6 | 5% | 98% | 7 | 5% | 96% | 23 | 3% | 98% |
| over \$100,000 | 1 | 1% | 100% | 1 | <1% | 100% | 2 | 2% | 100% | 6 | 4% | 100% | 10 | 2% | 100% |
| Total | 101 | 100% | | 278 | 100% | | 127 | 100% | | 150 | 100% | | 656 | 100% | |
| Mean | \$10,233 | | | \$7,977 | | | \$12,346 | | | \$22,147 | | | \$12,410 | | |
| Median | \$3,500 | | | \$5,000 | | | \$5,000 | | | \$7,500 | | | \$5,000 | | |
| Maximum | \$200,000 | | | \$250,000 | | | \$150,000 | | | \$500,000 | | | \$500,000 | | |

(Column totals may not equal 100% and cumulative percentages may not equal the sum of previous percentages because of rounding.)

Figure 3 illustrates the data presented in Tables 5 and 6 for the combined boroughs, comparing the distribution of bail amounts set at arraignment (on the left) with the face amounts of bonds that were posted (on the right). The nearly identical pattern of bars on each side of the figure makes it apparent that there was little change.

Figure 3
Bail And Bond Amounts



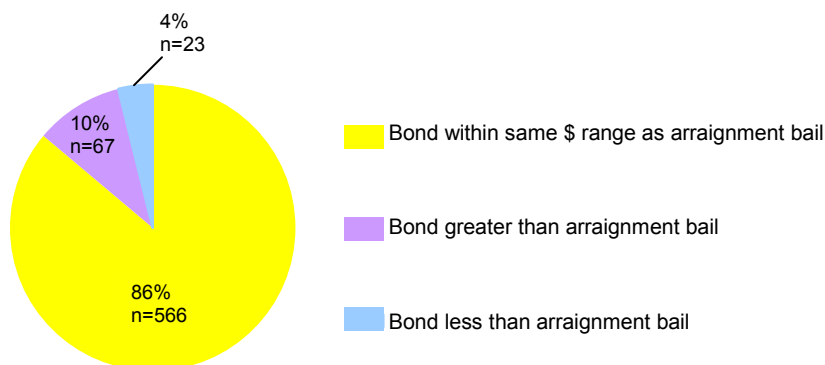
A more precise comparison between bail set at arraignment and the face amount of the bond is presented in Table 7. The highlighted yellow cells indicate cases with no change in the dollar range from arraignment to posting of the bond. The cells above the yellow diagonal (lavender) contain cases with a bond amount that was *greater* than — and the cells below the diagonal (blue) contain cases with a bond amount that was *less* than — the lowest cash amount needed to post bail at arraignment. A higher bond amount would be expected in cases with a cash alternative set at arraignment because the bond would have to be posted in the higher amount. It is also possible that in some cases the court raised or lowered the defendant’s bail before the bond was posted.

Table 7
Comparison Of Bail Amount Set At Arraignment
With Face Amount Of Bond

| Bail Amount Set At Arraignment | Face Amount of Bond | | | | | | | | Total |
|--------------------------------|---------------------|-------------------|-------------------|-------------------|---------------------|---------------------|----------------------|----------------|-------|
| | \$1,000 | \$1,001 – \$2,500 | \$2,501 – \$5,000 | \$5,001 – \$9,999 | \$10,000 – \$20,000 | \$20,001 – \$40,000 | \$40,001 – \$100,000 | over \$100,000 | |
| \$1,000 | 47 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 50 |
| \$1,001 – \$2,500 | 3 | 148 | 25 | 0 | 2 | 0 | 0 | 0 | 178 |
| \$2,501 – \$5,000 | 0 | 5 | 160 | 6 | 13 | 0 | 0 | 0 | 184 |
| \$5,001 – \$9,999 | 0 | 1 | 3 | 40 | 6 | 0 | 1 | 0 | 51 |
| \$10,000 – \$20,000 | 3 | 0 | 4 | 1 | 109 | 5 | 0 | 0 | 122 |
| \$20,001 – \$40,000 | 0 | 0 | 0 | 1 | 1 | 36 | 3 | 0 | 41 |
| \$40,001 – \$100,000 | 0 | 0 | 0 | 0 | 0 | 0 | 19 | 3 | 22 |
| over \$100,000 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 7 | 8 |
| Total | 53 | 156 | 193 | 48 | 132 | 41 | 23 | 10 | 656 |

Figure 4 illustrates the proportion of cases within each comparative group: in 86% of cases the bond amount fell into the same dollar range as the arraignment bail amount; in 10% of cases the bond amount was greater than the arraignment amount; and in only a very small percentage of cases (4%) the bond amount was lower than the bail set at arraignment.

Figure 4
Relationship Of Bond Amount To Bail Set At Arraignment



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B. The Principals: Insurance Company, Agent, And Indemnitor

Insurance Company (Surety)

The surety for a bond is the insurance company that underwrites, or insures, the bond for the agent who writes it. If the defendant fails to appear and bail is forfeited, the insurance company is liable to the courts for the face amount of the bond.

The box at right lists the eight insurance companies that underwrote all of the bonds for cases in this sample.

Table 8 shows the number of bonds underwritten by each company in each borough. Only three companies are located in the New York area, two in Newark (Allegheny Casualty Company and International Fidelity Insurance Company) and one in Manhattan (Seneca Insurance Company). The companies that underwrote the largest numbers of bonds were not the local ones, but Fairmont Specialty Insurance Company, headquartered in Houston, and Safety National Casualty Corporation in St. Louis. These two companies together were responsible for nearly half of all bonds in the sample.

| Insurance Companies | |
|--|----------------------|
| Accredited Surety & Casualty Company, Inc. | Winter Park, Florida |
| Allegheny Casualty Company | Newark, NJ |
| American Reliable Insurance Company | Scottsdale, AZ |
| Evergreen National Indemnity Company | Columbus, OH |
| Fairmont Specialty Insurance Company | Houston, TX |
| International Fidelity Insurance Company | Newark, NJ |
| Safety National Casualty Corporation | St. Louis, MO |
| Seneca Insurance Company | New York, NY |

Table 8
Insurance Companies Underwriting New York City Bonds

| | Bronx | | Brooklyn | | Manhattan | | Queens | | Total | |
|------------|-------|--------|----------|--------|-----------|--------|--------|--------|-------|--------|
| Accredited | 31 | (31%) | 21 | (8%) | 15 | (12%) | 6 | (4%) | 73 | (11%) |
| Allegheny | 10 | (10%) | 14 | (5%) | 2 | (2%) | 30 | (20%) | 56 | (9%) |
| American | 0 | | 5 | (2%) | 10 | (8%) | 11 | (7%) | 26 | (4%) |
| Evergreen | 12 | (12%) | 3 | (1%) | 43 | (34%) | 1 | (1%) | 59 | (9%) |
| Fairmont | 0 | | 95 | (34%) | 3 | (2%) | 70 | (47%) | 168 | (26%) |
| Fidelity | 6 | (6%) | 42 | (15%) | 14 | (11%) | 10 | (7%) | 72 | (11%) |
| Safety | 40 | (40%) | 47 | (17%) | 36 | (28%) | 10 | (7%) | 133 | (20%) |
| Seneca | 2 | (2%) | 51 | (18%) | 4 | (3%) | 12 | (8%) | 69 | (11%) |
| Total | 101 | (100%) | 278 | (100%) | 127 | (100%) | 150 | (100%) | 656 | (100%) |

While some companies were well represented in all four boroughs, others had a much stronger presence in one borough or another. Fairmont, for example, accounted for 34% of Brooklyn bonds and 47% in Queens, but only 2% in Manhattan and none in the Bronx. Evergreen was the most active company in Manhattan, with 34% of the total, but this company insured only 1% of Brooklyn and Queens bonds. Seneca, which has offices in lower Manhattan, underwrote many more bonds in Brooklyn (51, or 18% of the total for Brooklyn) than in Manhattan (4, or 3% of the total for Manhattan). Clearly, the location of the insurance company was not a factor in the company’s market share in each borough.

Bond Agent

Anyone seeking a bail bond for a jailed family member or friend deals directly with a local bondsman who acts as an agent of the insurance company, and not with the insurance company itself. Twenty-five agents, with offices located throughout the four largest boroughs as well as in Hempstead, Long Island, wrote bonds for defendants in the sample. Table 9 lists the agents, coded from “A” to “Y,” grouped by insurance company. The table shows the location of the agent’s office and the number of bonds for each, separately by borough of prosecution. Agents who used different underwriters for different bonds are listed under more than one insurance company. These agents (B, D, E, H, O, Q, and S) have an asterisk by the code letter, which is in bold type.

Table 9
Number Of Bonds By Bond Agent, Insurance Company,
And Borough Of Prosecution

| Company Name | Agent & Office Location | Number of bonds for defendants prosecuted in: | | | | Total |
|--------------|-------------------------|---|------------|------------|------------|------------|
| | | Bronx | Brooklyn | Manhattan | Queens | |
| Accredited | *E Hempstead | | 1 (<1%) | 1 (1%) | | 2 (<1%) |
| | L Manhattan | 21 (21%) | 15 (5%) | 11 (9%) | 4 (3%) | 51 (8%) |
| | *Q Brooklyn | | 1 (<1%) | | | 1 (<1%) |
| | R Manhattan | 10 (10%) | 4 (1%) | 3 (2%) | | 17 (3%) |
| | Y Hempstead | | | | 2 (1%) | 2 (<1%) |
| Allegheny | G Queens | | 7 (3%) | | 30 (20%) | 37 (6%) |
| | P Queens | 10 (10%) | 7 (3%) | 2 (2%) | | 19 (3%) |
| American | J Queens | | 3 (1%) | 1 (1%) | 7 (5%) | 11 (2%) |
| | *S Manhattan | | | 2 (2%) | | 2 (<1%) |
| | T Queens | | 2 (1%) | 7 (6%) | 4 (3%) | 13 (2%) |
| Evergreen | U Manhattan | 12 (12%) | 3 (1%) | 43 (34%) | 1 (1%) | 59 (9%) |
| Fairmont | *B Queens | | 2 (1%) | 1 (1%) | 3 (2%) | 6 (1%) |
| | *D Hempstead | | 15 (5%) | 1 (1%) | 11 (7%) | 27 (4%) |
| | *E Hempstead | | 1 (<1%) | | | 1 (<1%) |
| | K Hempstead | | 15 (5%) | | | 15 (2%) |
| | *O Brooklyn | | 62 (22%) | 1 (1%) | 7 (5%) | 70 (11%) |
| | W Hempstead | | | | 49 (33%) | 49 (7%) |
| Fidelity | M Manhattan | 5 (5%) | 4 (1%) | 13 (10%) | 10 (7%) | 32 (5%) |
| | *Q Brooklyn | | 38 (14%) | | | 38 (6%) |
| | *S Manhattan | | | 1 (1%) | | 1 (<1%) |
| | X unknown | 1 (1%) | | | | 1 (<1%) |
| Safety | A Bronx | | 2 (1%) | | | 2 (<1%) |
| | *B Queens | 1 (1%) | 1 (<1%) | | 1 (1%) | 3 (<1%) |
| | F Brooklyn | | 7 (3%) | | | 7 (1%) |
| | *H Bronx | 36 (36%) | 37 (13%) | 18 (14%) | 6 (4%) | 97 (15%) |
| | I Brooklyn & Manhattan | 1 (1%) | | 18 (14%) | 2 (1%) | 21 (3%) |
| | *O Brooklyn | 2 (2%) | | | 1 (7%) | 3 (<1%) |
| Seneca | C Brooklyn | | 25 (9%) | | | 25 (4%) |
| | *D Hempstead | | 1 (<1%) | | | 1 (<1%) |
| | *H Bronx | | 1 (<1%) | | | 1 (<1%) |
| | N Brooklyn | | 21 (8%) | | | 21 (3%) |
| | V Queens | 2 (2%) | 3 (1%) | 4 (3%) | 12 (8%) | 21 (3%) |
| Total | | 101 (100%) | 278 (100%) | 127 (100%) | 150 (100%) | 656 (100%) |

Percentages may not total 100% because of rounding.

*Bold type identifies agents who appear twice in the list, under two different bond companies.

The highlighted cells in Table 9 point to the agent who wrote the largest number of bonds citywide (yellow) and in each borough (blue). Agent H wrote both the largest number of bonds citywide (98) and in the Bronx (36, highlighted in yellow with blue borders). The agents who wrote the most bonds in Brooklyn, Manhattan, and Queens were Agents O, U, and W respectively.

Although Seneca's headquarters are in Manhattan, the two agents who wrote most of Seneca's bonds (C and N) had addresses in Brooklyn, which explains why the majority of bonds underwritten by Seneca were for defendants in Brooklyn cases. The one Seneca agent with an office in Queens (V) wrote the majority of his bonds for Queens cases.

As this suggests, many agents wrote bonds primarily for cases prosecuted in the borough where their offices were located. Other examples include Agent O (Fairmont and Safety), with an office in Brooklyn, who wrote 62 of his 73 bonds for Brooklyn cases; and Agent U (Evergreen), located in Manhattan, who wrote 43 of his 59 bonds for defendants in Manhattan cases. Agents Q (Accredited and Fidelity) and N (Seneca) wrote all their bonds for Brooklyn cases, consistent with their office locations in Brooklyn.

On the other hand, several agents wrote more bonds for cases outside their home boroughs than within. Agent H, for example: In spite of the fact that he was located in the Bronx and his name was on more Bronx bonds than any other bondsman's, he actually wrote most of his bonds for cases outside the Bronx. Another example is Agent L, who posted only 11 of 51 bonds for Manhattan cases in spite of his office location near the Criminal Court in lower Manhattan.

The office address of one agent (X) was omitted from the bail affidavit form, which was also missing other important information (collateral and fee). A California address was given for this agent on the website of the New York State Insurance Department, but the list was current as of April 2010 and the agent could have relocated since the study period in 2005. The bond was signed for by the defendant's mother, who lived in Queens.

Table 10 summarizes the data pertaining to the relationship between bond agents' locations and the borough of prosecution. The yellow highlighted diagonal indicates bonds that were written by an agent with an office in the same borough as the case. The majority of Brooklyn and Manhattan bonds were in this category: 55% and 57% respectively.

The blue highlighted cells point to bonds that were written by an agent located outside the borough of prosecution, when those cases constituted the largest number among cases prosecuted in a single borough. Among Queens cases, five agents in neighboring Hempstead, Long Island (just over the border from Queens in Nassau County), wrote more bonds (62) than did six Queens agents (57). And five Manhattan bondsmen wrote more bonds for Bronx defendants (48) than did two agents in the Bronx (36).

It is possible that the bondsman's office address listed on the bail affidavit does not reflect where business was done in every case. The bond company may have branch offices in several boroughs, but put the address of the home office on all court papers. Online advertisements by bond companies in New York — some of them with the names of the same bond agents in the research sample — tout the convenience factor of their many locations. Yet, with one exception, each agent represented in the research sample gave the same address on every bond he or she wrote, regardless of the borough of prosecution. (The one exception was agent "I," who listed a Manhattan address on one of the 21 bonds she wrote, and a Brooklyn address on

all others. She is included with Brooklyn agents in Table 10.) This may explain the cases in which the bond agent was apparently located in a different borough from the courthouse.

Table 10
Number And Percent Of Bonds
By Location Of Bond Agent And Borough Of Prosecution

| Bond Agent Location | Number of agents | Borough of Prosecution | | | | Total |
|------------------------------|------------------|------------------------|------------|------------|------------|------------|
| | | Bronx | Brooklyn | Manhattan | Queens | |
| <i>New York City</i> | | | | | | |
| Bronx | 2 | 36 (36%) | 40 (14%) | 18 (14%) | 6 (4%) | 100 (15%) |
| Brooklyn | 6 | 3 (3%) | 154 (55%) | 19 (15%) | 10 (7%) | 186 (28%) |
| Manhattan | 5 | 48 (48%) | 26 (9%) | 73 (57%) | 15 (10%) | 162 (25%) |
| Queens | 6 | 13 (13%) | 25 (9%) | 15 (12%) | 57 (38%) | 110 (17%) |
| <i>Outside NYC</i> | | | | | | |
| Hempstead, L.I. | 5 | 0 | 33 (12%) | 2 (2%) | 62 (41%) | 97 (15%) |
| TOTAL | | 100 (100%) | 278 (100%) | 127 (100%) | 150 (100%) | 655 (100%) |
| <i>Unknown</i> | 1 | 1 | 0 | 0 | 0 | 1 |
| All cases in the bond sample | 25 | 101 | 278 | 127 | 150 | 656 |

Indemnitor

The indemnitor—usually a family member or friend of the defendant—is the person who pays the premium and puts up the collateral for a bond (also known as the co-signer). Sometimes more than one indemnitor was listed on the bail affidavit, but we collected information for only the first one listed. Generally, the bail affidavit included the relationship of the indemnitor to the defendant, but this information is not required by the statute governing insurance company bail bonds (CPL §520.20.4[a]), and it was missing from 78 of the bonds in the sample.

Table 11 presents data on indemnitor-defendant relationships. Twenty of the bonds missing this information were nevertheless categorized as “family” because the last name of the indemnitor was the same as the defendant’s.

Four out of five indemnitors were related to the defendant, either by blood or by marriage (or on the basis of a matching last name). Mothers co-signed for bonds far more often than anyone else (n=159, or 27% of all bonds in the sample). Sisters were next, with 51 (9% of the total). There was a three-way tie for the third most frequent relationship: aunt/uncle, father, and cousin each accounted for 7% of the total. Immediate family (parents and siblings) accounted for nearly half of all indemnitors (34% parents and 14% siblings).

The rest of the indemnitors identified themselves as a friend of the defendant (14%); in an intimate relationship with the defendant (fiancé/fiancée or boyfriend/girlfriend, 6%); or as one of the relationships grouped together as “other.” The “other” category included an employer, a sitter, a counselor, and one case in which the defendant himself co-signed for his own bond.

Table 11
Indemnitor-Defendant Relationship

| Relationship Category | Specific Relationship | | | | | Total | |
|--|--|-----------------------------|------------------------------|--|----------------------------------|------------|---|
| Parent | Mother (including stepmother, godmother) 159 (27%) | | | Father (including stepfather) 43 (7%) | | 202 (34%) | Total relative 397 (66%) |
| Sibling | Sister (including godsister) 51 (9%) | | | Brother 35 (6%) | | 86 (14%) | |
| Other Relative | Aunt/ Uncle 43 (7%) | Nephew/ Niece 5 (1%) | Grand- parent 15 (3%) | Son/ Daughter 4 (1%) | Cousin 42 (7%) | 109 (18%) | |
| Spouse | Wife (including common-law, ex-wife) 24 (4%) | | | Husband (including ex-husband) 2 (<1%) | | 26 (4%) | Total family (relatives + related by mar- riage) 477 (80%) |
| In-laws | Mother- in-law 11 (2%) | Father- in-law 4 (1%) | Sister- in-law 11 (2%) | Brother- in-law 7 (1%) | Unspecified in-law 1 (<1%) | 34 (6%) | |
| Missing relationship but same last name as defendant | | | | | | 20 (3%) | |
| Other Intimate Rela- tionship | Fiancé/Fiancée 15 (3%) | | | Boyfriend/Girlfriend 18 (3%) | | 33 (6%) | |
| Friend | | | | | | 84 (14%) | |
| Other | Employer/Sitter/Counselor 3 (1%) | | | Self 1 (<1%) | | 4 (1%) | |
| Total | | | | | | 598 (100%) | |
| Relationship Not Available | | | | | | 58 | |
| Total | | | | | | 656 | |

Row percentages may not equal the sum of cell percentages because of rounding.

Geospatial relationships among the indemnitor's residence, the courthouse, and the bond agent's (home) office are illustrated in Figure 5. Overlapping circles indicate location in the same borough; a circle that does not touch other circles represents a location in a different borough. The size of the circles is a reflection of the proportion of cases falling into each group.

The most common pattern (Group 1) was for all three of the principals—agent, indemnitor, and court—to be located in the same borough. (Westchester County was included with the Bronx, and Suffolk and Nassau Counties were included with Queens as the “same borough” for this analysis.) This pattern was found for 41% of the sample cases.

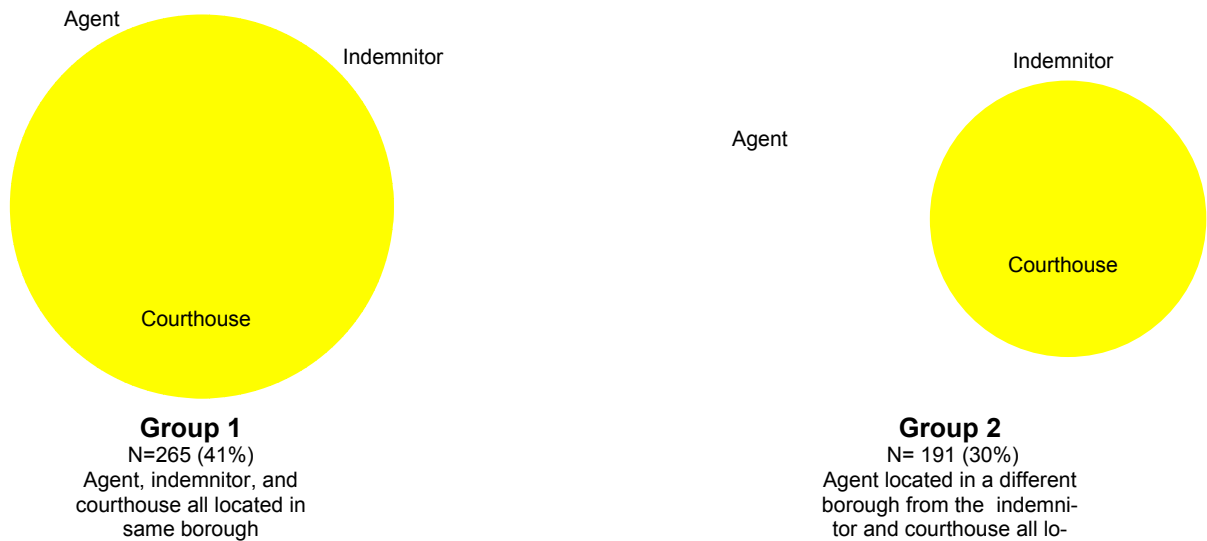
Group 2 includes cases with a matching borough for indemnitor and court, but the bond agent was apparently located elsewhere. Group 2 was the second largest category, with 30% of cases. Because it is not clear why so many family members would travel to another borough to find a bondsman, the speculation about branch offices makes sense for this group as well as for Group 4, which also consists of cases in which the bondsman did not share a borough with either the indemnitor or the courthouse. There were 239 cases in these two groups combined, constituting 37% of the sample.

Groups 3 through 5 consist of cases with an indemnitor who lived outside the borough where the defendant was prosecuted (together constituting 29% of the cases). This means that in a large minority of cases, family members and others had to travel some distance to attend court hearings and meet with the bondsman. For the tiny number of cases in Group 5, with a bond agent apparently located in the same borough as the indemnitor (but different from the courthouse), the person co-signing for the bond might have found a bondsman near home — or the bondsman may have been operating out of a branch office that was actually near the courthouse.

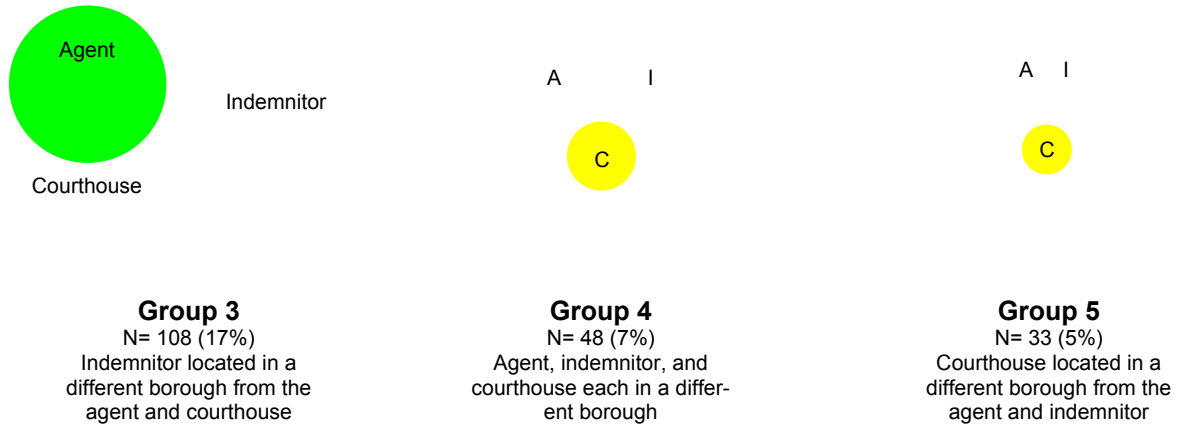
Figure 5
Geospatial Relationships Among Agent, Indemnitor, And Courthouse
 N=645 (11 cases missing agent or indemnitor address were excluded)

Overlapping circles indicate same-borough location; nontouching circles indicate different-borough location.
 Circle size reflects the proportion of cases that fit the criteria for each group.

Indemnitor lives in the same borough as the location of the courthouse (71%):



Indemnitor does not live in the same borough as the location of the courthouse (29%):



For Figure 1, Westchester County was combined with the Bronx; Nassau and Suffolk Counties were combined with Queens. Consequently, someone living in Nassau or Suffolk County who co-signed for a bond for a Queens defendant through the services of a bail bondsman located in Hempstead, L.I., would be included with Group 1.

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C. Premiums And Other Fees

As pointed out in the introduction, the fee (premium) bondsmen are allowed to charge is regulated by the New York State Department of Insurance, and is scaled to the amount of the bond. Unlike cash bail, the bondsman's fee is not returned to the client at the end of the case. Table 12 on the next two pages presents data on the fees clients paid, separately by borough. For every bond amount found in the sample, the table shows the maximum fee allowed by law and the actual fee recorded on the bail affidavit in the defendant's case file. In 18 cases the fee was omitted from the court papers, although in all but one of these cases information about the collateral was provided. It is unlikely that the omission of the fee on the court papers means that no fee was charged, as this is the bond agent's source of income; the omission was probably the result of clerical error.

The fee reported in Table 12 consists of the premium plus any service charge added by Brooklyn bondsmen. Service charges were not levied in any other borough, but in Brooklyn they were common. Nearly a third of Brooklyn bonds had a service charge in addition to a premium (82 of the 278 Brooklyn bonds, not shown), and two had a service charge with no premium. The practice in Brooklyn among some agents was to divide the fee into a premium and a service charge that together usually totaled the legal maximum (i.e., they did not tack the service charge on to the maximum fee, which would have been illegal). The same three agents wrote nearly all of the bonds that had a service charge: one split the legal maximum 50-50 between the premium and service charge (Agent N, who charged a service fee for all 21 bonds he wrote); another followed the same pattern, except that he was in the habit of taking 10% of the total bond amount when he should have taken 8% for the part over \$3,000 (Agent C); and the third divided the premium and service charge unequally (often a 20-80 split), always totaling the legal maximum fee (Agent Q). These three agents together accounted for 81 of the 84 service charges. It seems arbitrary whether the fee was charged as a premium or as a service charge, or how it was divided between the two. For this reason, service charges are not shown separately in Table 12, but are included in the reported fee.

The mean and median fees for each borough are presented at the end of Table 12. Median fees were lowest in the Bronx (\$340) and highest in Queens (\$660), with Brooklyn and Manhattan in the middle (\$460). This follows from the fact that median bond amounts were also lowest in the Bronx and highest in Queens, as shown previously (Table 6).

Fees equal to the maximum allowed by law were the norm in every borough; they are indicated in the table in bold print. Fees lower than the legal limit were rare; they are indicated in regular print. Illegal fees, higher than the legal limit, are highlighted in pink.

Apart from the fees for which we have data, many extra fees may have been charged in these cases, as described in the Introduction (fn 3). Such fees are not charged up front, but would be withheld from the refund of cash collateral at the end of the case.

Table 12
 Bond Agents' Fees By Bond Amount And Borough Of Prosecution
 (Pink highlight = fee higher than amount allowed by law)

| Bond amount (Number and % in research sample) | Maximum fee by law: 10% of first \$3,000 8% of next \$7,000 6% of amount over \$10,000 | Fee (premium and/or service charge) | | | |
|--|---|---|---|---|-----------------------------|
| | | Bronx | Brooklyn | Manhattan | Queens |
| \$1,000 N = 53 (8%) | \$100 | \$100 n = 7 | \$100 n = 34 \$150 n = 1 \$200 n = 1 (a) n = 1 | \$100 n = 4 | \$100 n = 4 \$150 n = 1 |
| \$1,500 N = 54 (8%) | \$150 | \$150 n = 12 | \$150 n = 22 | \$150 n = 8 | \$150 n = 12 |
| \$2,000 N = 26 (4%) | \$200 | \$100 n = 1 \$200 n = 4 | \$200 n = 10 \$250 n = 1 | \$200 n = 4 | \$200 n = 6 |
| \$2,500 N = 76 (12%) | \$250 | \$250 n = 14 \$460 n = 1 | \$200 n = 2 \$250 n = 34 (a) n = 1 | \$250 n = 12 | \$250 n = 12 |
| \$3,000 N = 18 (3%) | \$300 | \$300 n = 3 | \$300 n = 10 | \$300 n = 5 | |
| \$3,500 N = 43 (7%) | \$340 | \$340 n = 12 | \$250 n = 1 \$340 n = 11 \$350 n = 5 (a) n = 1 | \$340 n = 6 | \$340 n = 3 \$350 n = 4 |
| \$4,000 N = 2 (<1%) | \$380 | | | \$380 n = 2 | |
| \$4,500 N = 1 (<1%) | \$420 | | \$600 n = 1 | | |
| \$5,000 N = 129 (20%) | \$460 | \$460 n = 17 \$860 n = 1 | \$400 n = 2 \$460 n = 47 \$500 n = 8 (a) n = 1 | \$460 n = 27 \$465 n = 1 | \$460 n = 25 |
| \$6,000 N = 3 (<1%) | \$540 | | | \$540 n = 3 | |
| \$6,500 N = 1 (<1%) | \$580 | | \$580 n = 1 | | |
| \$7,000 N = 3 (<1%) | \$620 | | \$620 n = 2 | \$620 n = 1 | |
| \$7,500 N = 41 (6%) | \$660 | \$640 n = 2 \$660 n = 5 \$860 n = 1 | \$640 n = 3 \$660 n = 12 (a) n = 1 | \$660 n = 7 (a) n = 1 | \$660 n = 8 (a) n = 1 |
| \$10,000 N = 82 (13%) | \$860 | \$860 n = 5 | \$660 n = 1 \$860 n = 27 \$1,000 n = 2 (a) n = 2 | \$860 n = 23 | \$860 n = 22 |
| \$15,000 N = 29 (4%) | \$1,160 | \$1,160 n = 3 | \$1,160 n = 11 | \$1,160 n = 3 | \$1,160 n = 11 (a) n = 1 |
| \$20,000 N = 21 (3%) | \$1,460 | \$1,460 n = 1 (a) n = 1 | \$1,460 n = 3 (a) n = 1 | \$1,400 n = 1 \$1,460 n = 2 (a) n = 2 | \$1,460 n = 10 |

(continued on following page)

Table 12
 Bond Agents' Fees By Bond Amount And Borough Of Prosecution
 (continued from previous page)

| Bond amount (Number and % in research sample) | Maximum fee by law: 10% of first \$3,000 8% of next \$7,000 6% over \$10,000 | Fee (premium and/or service charge) | | | |
|--|--|-------------------------------------|-----------------------------|---------------------------------------|--|
| | | Bronx | Brooklyn | Manhattan | Queens |
| \$25,000 N = 31 (5%) | \$1,760 | \$1,760 n = 3 | \$1,760 n = 9 | \$1,160 n = 1 \$1,760 n = 6 | \$1,760 n = 12 |
| \$30,000 N = 4 (1%) | \$2,060 | \$2,060 n = 1 | \$2,060 n = 1 | | \$2,060 n = 2 |
| \$35,000 N = 6 (1%) | \$2,360 | \$2,360 n = 2 | \$2,360 n = 1 | | \$2,360 n = 3 |
| \$50,000 N = 16 (2%) | \$3,260 | \$3,260 n = 1 (a) n = 2 | \$3,240 n = 3 | \$3,260 n = 2 (a) n = 1 | \$3,110 n = 1 \$3,240 n = 1 \$3,260 n = 5 |
| \$70,000 N = 1 (<1%) | \$4,460 | | | \$4,460 n = 1 | |
| \$75,000 N = 3 (<1%) | \$4,760 | | \$4,800 n = 2 | \$4,760 n = 1 | |
| \$100,000 N = 3 (<1%) | \$6,260 | \$6,000 n = 1 | \$6,260 n = 1 | \$6,260 n = 1 | |
| \$150,000 N = 5 (1%) | \$9,260 | | | \$9,260 n = 1 (a) n = 1 | \$9,260 n = 1 \$9,300 n = 2 |
| \$175,000 N = 1 (<1%) | \$10,760 | | | | \$10,500 n = 1 |
| \$200,000 N = 1 (<1%) | \$12,260 | \$12,260 n = 1 | | | |
| \$250,000 N = 1 (<1%) | \$15,260 | | \$15,300 n = 1 | | |
| \$500,000 (<1%) N = 2 | \$30,260 | | | | \$25,000 n = 1 \$30,260 n = 1 |
| TOTAL N = 656 (100%) (18 cases missing fee information are included in column totals, but not in means or medians.) | | N=101 (missing fee, n=3) | N=278 (missing fee, n=8) | N=127 (missing fee, n=5) | N=150 (missing fee, n=2) |
| All fees | | \$707 \$340 | \$629 \$460 | \$820 \$460 | \$1,491 \$660 |

(a) No fee was entered on the bail affidavit form.

There were 33 illegal fees, comprising 5% of the bonds. Most were not much more than the legal maximum, often only \$10 or \$40 over the limit. The majority of illegal fees represent 10% of the total bond amount taken when a lower rate should have been charged on the portion over \$3,000. The two most common examples were a \$350 fee charged for a \$3,500 bond (the fee should have been no more than \$340) and \$500 charged for a \$5,000 bond (the fee should have been no more than \$460). Another pattern was to round up to the next hundred, as when the fee on a \$75,000 bond, legally no more than \$4,760, was rounded up to \$4,800 (two cases).

Figure 6 summarizes the findings regarding illegal fees, as well as fees that were below the legal maximum. The findings are presented by borough (5-A), by insurance underwriter (5-B), and by bond agent (5-C).

Most of the illegal fees were found in Brooklyn (5-A), where there were 22 bonds with a fee larger than the maximum allowed by law (8% of the 270 Brooklyn bonds). Queens cases accounted for 7 of the illegal fees (5% of the 148 bonds in Queens), Bronx cases accounted for 3 (3% of the 98 Bronx bonds), and there was one bond with an illegal fee in Manhattan (1% of 122 bonds). The illegal fee in Manhattan was only \$5 higher than allowed: \$465 charged for a \$5,000 bond that should have had a fee no higher than \$460.

The overcharges were confined to bonds underwritten by only three insurance companies (4-B): Seneca (19% of its 67 bonds had an illegal fee); Fairmont (8% of 165 bonds); and Safety (6% of 132 bonds).

The illegal fees were also confined to a minority of the agents (5-C). Eight agents were responsible for all illegal (high) fees: B, C, D, H, K, O, V, and W. However, even the worst offender (C) charged a legal fee for the majority of his bonds (56%), and illegal fees were charged in 20% or less of the bonds written by each of the other offenders.

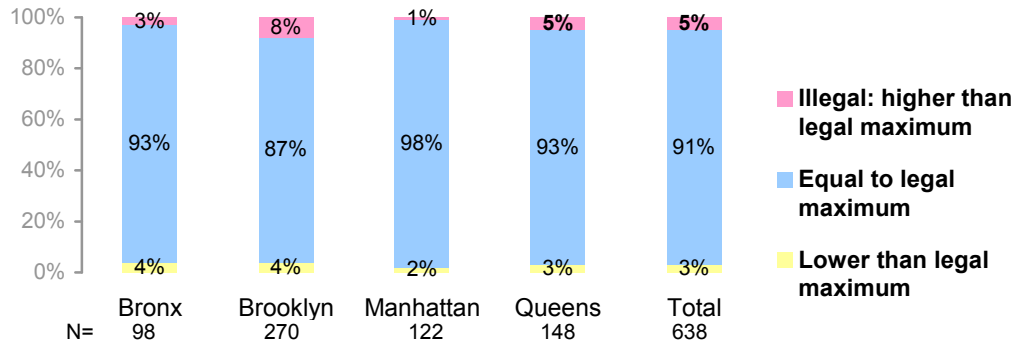
Over half of the agents who charged illegally high fees also sometimes gave clients a break with a fee that was lower than the legal maximum. Conversely, most of the below-maximum fees (17 out of the total 22) were charged by the same agents who overcharged on other bonds. Below-maximum fees usually involved small differences, between \$20 and \$60 under the limit: for example, \$400 charged instead of \$460 for a \$5,000 bond (2 instances, both Agent H); \$640 instead of \$660 for a \$7,500 bond (5 instances, all Agent H); or \$3,240 instead of \$3,260 for a \$50,000 bond (4 instances, three attributable to O and one to W). For one bond, a \$25,000 fee was charged instead of the legal maximum of \$30,260 for a \$500,000 bond (Agent G) — \$5,260 less than could have been charged. (These examples are included in the data presented in Table 12, but without identifying the agents involved.)

The fact that the departures from the legal maximum in both directions were largely the work of the same few agents may indicate that individual sloppiness in either record-keeping or arithmetic, or both, could account for most of the small variations, if not the larger ones. Each insurance company with an agent who charged illegal fees also had other agents who always charged precisely the legal maximum, so the variations could not be attributed to any practice originating with the insurance company.

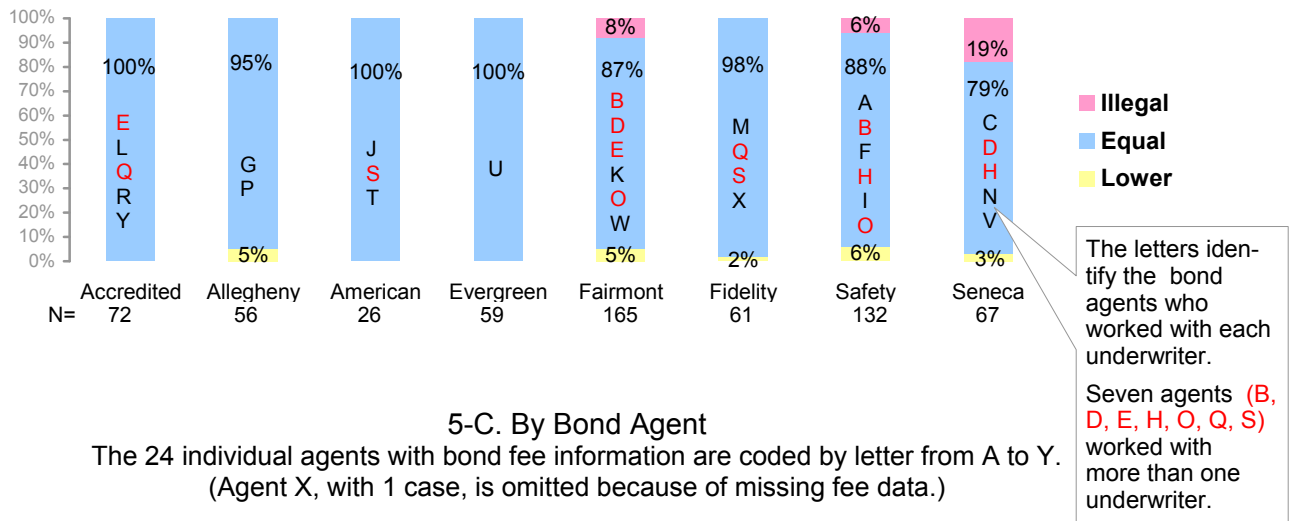
The 18 bonds with the fee missing from the bail affidavit form were excluded from Figure 5; these cases were also concentrated among a few agents and insurance companies. Seven agents (four insurance companies) were responsible for all the missing fees. Agent M (International Fidelity) was particularly remiss, with 8 missing fees (nearly half of all missing fees, not shown). The same agent filled out 24 other bail affidavits on which the fee was provided, but one of them — with a fee of \$660 when \$860 was the legal maximum — may have been inaccurately recorded.

Figure 6
 Level Of Bond Fee By Borough, Bond Company, And Bond Agent
 Percent of bond fees lower than, equal to, or higher than the maximum allowed by law
 (18 cases with missing fee data are excluded.)

5-A. By Borough

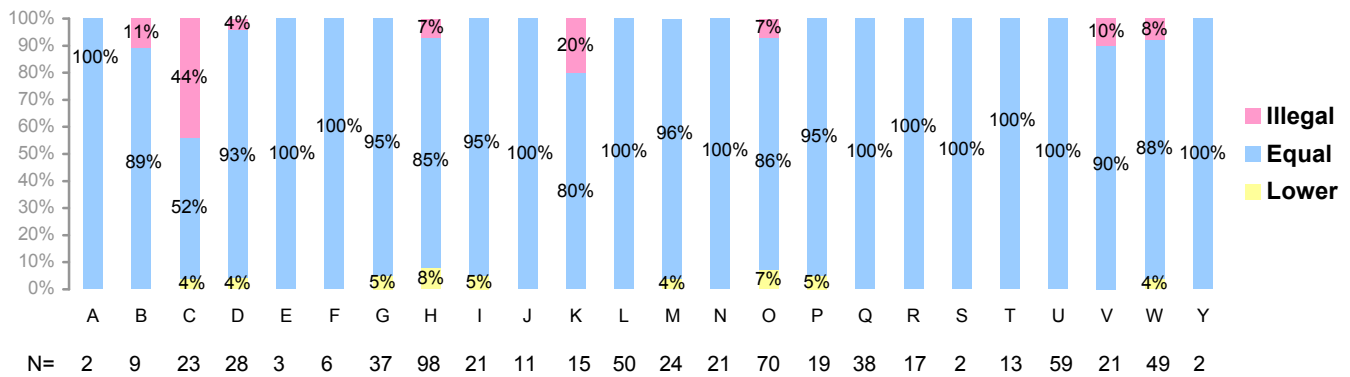


5-B. By Insurance Underwriter



5-C. By Bond Agent

The 24 individual agents with bond fee information are coded by letter from A to Y. (Agent X, with 1 case, is omitted because of missing fee data.)



D. Collateral

1. Types Of Collateral

A deposit of cash collateral was required for 91% of the bonds in the research sample, and some form of property was deposited as collateral in 11% of bonds (Table 13). These are overlapping categories, as there were a few bonds with mixed (cash and property) collateral.

Cash was the only type of collateral in 88% of bonds overall, property was the only type of collateral in 9% of bonds, and 3% had both cash and property collateral. Bonds in two Queens cases apparently had no collateral, although this information could have been omitted from the bail affidavit forms by mistake.

Table 13
Type Of Collateral By Borough Of Prosecution

| | Property | | No property | | Row totals | |
|--------------------------|----------|-------|-------------|-------|------------|--------|
| Bronx | | | | | | |
| Cash | 4 | (4%) | 93 | (92%) | 97 | (96%) |
| No cash | 4 | (4%) | 0 | | 4 | (4%) |
| Bronx column totals | 8 | (8%) | 93 | (92%) | 101 | (100%) |
| Brooklyn | | | | | | |
| Cash | 5 | (2%) | 256 | (92%) | 261 | (94%) |
| No cash | 17 | (6%) | 0 | | 17 | (6%) |
| Brooklyn column totals | 22 | (8%) | 256 | (92%) | 278 | (100%) |
| Manhattan | | | | | | |
| Cash | 8 | (6%) | 113 | (89%) | 121 | (95%) |
| No cash | 6 | (5%) | 0 | | 6 | (5%) |
| Manhattan column totals | 14 | (11%) | 113 | (89%) | 127 | (100%) |
| Queens | | | | | | |
| Cash | 1 | (1%) | 118 | (79%) | 119 | (79%) |
| No cash | 29 | (19%) | 2 | (1%) | 31 | (21%) |
| Queens column totals | 30 | (20%) | 120 | (80%) | 150 | (100%) |
| Combined Boroughs | | | | | | |
| Cash | 18 | (3%) | 580 | (88%) | 598 | (91%) |
| No cash | 56 | (9%) | 2 | (<1%) | 58 | (9%) |
| Combined column totals | 74 | (11%) | 582 | (89%) | 656 | (100%) |

Total percentages may not equal the sum of cell percentages because of rounding.

Property played a larger role as collateral in Queens than elsewhere in the City, and it was less likely to be combined with cash. Property collateral was deposited in 20% of Queens bonds, compared to 11% in Manhattan and only 8% in the Bronx and Brooklyn. Accordingly, cash-only collateral was less common in Queens than elsewhere, although it was still the predominant type: 79% of Queens bonds were secured by cash alone, compared to 89% of Manhattan bonds and 92% of bonds in the Bronx and Brooklyn.

Figure 7 presents this information visually, showing that in each borough most bonds were secured by cash alone. The figure also highlights the rarity of mixed collateral types: only 3% of bonds citywide were secured by a combination of cash and property, although mixed collateral was slightly more common in Manhattan (6%).

Figure 7
Type Of Collateral By Borough Of Prosecution



Most agents accepted property as collateral for at least a few of their bonds, as shown in Table 14; only six had no property collateral on any bond (A, C, F, K, N, and R). At the same time, property was not the predominant type of collateral for any agent: the greatest proportion of bonds with property collateral for any agent was 38% (V). (All bonds written by X and Y had property collateral, but these agents wrote only 1 and 2 bonds respectively). This suggests that property collateral is more a function of clients’ resources than idiosyncratic preferences of individual agents.

Table 14
Type Of Collateral By Bond Agent

| | Property | No property | Row totals |
|-----------------------|----------|-------------|------------|
| Agent A | | | |
| Cash | | 2 | 2 (100%) |
| No cash | | | 0 |
| Agent A column totals | 0 | 2 (100%) | 2 (100%) |
| Agent B | | | |
| Cash | 1 (11%) | 7 (78%) | 8 (89%) |
| No cash | 1 (11%) | 0 | 1 (11%) |
| Agent B column totals | 2 (22%) | 7 (78%) | 9 (100%) |
| Agent C | | | |
| Cash | | 25 (100%) | 25 (100%) |
| No cash | | | 0 |
| Agent C column totals | 0 | 25 (100%) | 25 (100%) |
| Agent D | | | |
| Cash | | 23 (82%) | 23 (82%) |
| No cash | 5 (18%) | | 5 (18%) |
| Agent D column totals | 5 (18%) | 23 (82%) | 28 (100%) |
| Agent E | | | |
| Cash | 1 (33%) | 2 (67%) | 3 (100%) |
| No cash | | | |
| Agent E column totals | 1 (33%) | 2 (67%) | 3 (100%) |
| Agent F | | | |
| Cash | | 7 (100%) | 7 (100%) |
| No cash | | | 0 |
| Agent F column totals | 0 | 7 (100%) | 7 (100%) |
| Agent G | | | |
| Cash | | 29 (78%) | 29 (78%) |
| No cash | 8 (22%) | | 8 (22%) |
| Agent G column totals | 8 (22%) | 29 (78%) | 37 (100%) |
| Agent H | | | |
| Cash | 3 (3%) | 95 (97%) | 98 (100%) |
| No cash | | | 0 |
| Agent H column totals | 3 (3%) | 95 (97%) | 98 (100%) |
| Agent I | | | |
| Cash | 1 (5%) | 19 (90%) | 20 (95%) |
| No cash | 1 (5%) | | 1 (5%) |
| Agent I column totals | 2 (10%) | 19 (90%) | 21 (100%) |
| Agent J | | | |
| Cash | | 10 (91%) | 10 (91%) |
| No cash | 1 (9%) | | 1 (9%) |
| Agent J column totals | 1 (9%) | 10 (91%) | 11 (100%) |
| Agent K | | | |
| Cash | | 15 (100%) | 15 (100%) |
| No cash | | | 0 |
| Agent K column totals | 0 | 15 (100%) | 15 (100%) |
| Agent L | | | |
| Cash | 2 (4%) | 47 (92%) | 49 (96%) |
| No cash | 2 (4%) | | 2 (4%) |
| Agent L column totals | 4 (8%) | 47 (92%) | 51 (100%) |
| Agent M | | | |
| Cash | 2 (6%) | 23 (72%) | 25 (78%) |
| No cash | 7 (22%) | | 7 (22%) |
| Agent M column totals | 9 (28%) | 23 (72%) | 32 (100%) |

(continued on following page)

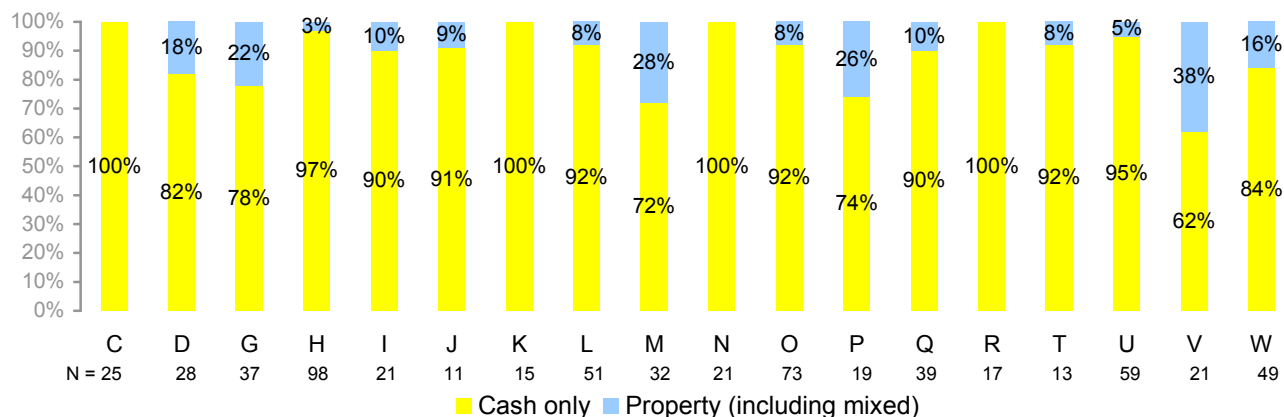
Table 14
Type Of Collateral By Bond Agent (continued from previous page)

| | Property | No property | Row totals |
|--------------------------|----------|-------------|------------|
| Agent N | | | |
| Cash | | 21 (100%) | 21 (100%) |
| No cash | | | 0 |
| Agent N column totals | 0 | 21 (100%) | 21 (100%) |
| Agent O | | | |
| Cash | | 66 (90%) | 66 (90%) |
| No cash | 6 (8%) | 1 (1%) | 7 (10%) |
| Agent O column totals | 6 (8%) | 67 (92%) | 73 (100%) |
| Agent P | | | |
| Cash | 2 (10%) | 14 (74%) | 16 (84%) |
| No cash | 3 (16%) | | 3 (16%) |
| Agent P column totals | 5 (26%) | 14 (74%) | 19 (100%) |
| Agent Q | | | |
| Cash | | 35 (90%) | 35 (90%) |
| No cash | 4 (10%) | | 4 (10%) |
| Agent Q column totals | 4 (10%) | 35 (90%) | 39 (100%) |
| Agent R | | | |
| Cash | | 17 (100%) | 17 (100%) |
| No cash | | | 0 |
| Agent R column totals | 0 | 17 (100%) | 17 (100%) |
| Agent S | | | |
| Cash | 1 (33%) | 2 (67%) | 3 (100%) |
| No cash | | | 0 |
| Agent S column totals | 1 (33%) | 2 (67%) | 3 (100%) |
| Agent T | | | |
| Cash | | 12 (92%) | 12 (92%) |
| No cash | 1 (8%) | | 1 (8%) |
| Agent T column totals | 1 (8%) | 12 (92%) | 13 (100%) |
| Agent U | | | |
| Cash | 2 (3%) | 56 (95%) | 58 (98%) |
| No cash | 1 (2%) | | 1 (2%) |
| Agent U column totals | 3 (5%) | 56 (95%) | 59 (100%) |
| Agent V | | | |
| Cash | 2 (10%) | 12 (57%) | 14 (67%) |
| No cash | 6 (29%) | 1 (5%) | 7 (33%) |
| Agent V column totals | 8 (38%) | 13 (62%) | 21 (100%) |
| Agent W | | | |
| Cash | 1 (2%) | 41 (84%) | 42 (86%) |
| No cash | 7 (14%) | | 7 (14%) |
| Agent W column totals | 8 (16%) | 41 (84%) | 49 (100%) |
| Agent X | | | |
| Cash | | | 0 |
| No cash | 1 (100%) | | 1 (100%) |
| Agent X column totals | 1 (100%) | 0 | 1 (100%) |
| Agent Y | | | |
| Cash | | | 0 |
| No cash | 2 (100%) | | 2 (100%) |
| Agent Y column totals | 2 (100%) | 0 | 2 (100%) |
| All Agents | | | |
| Cash | 18 (3%) | 580 (88%) | 598 (91%) |
| No cash | 56 (9%) | 2 (<1%) | 58 (9%) |
| All agents column totals | 74 (11%) | 582 (89%) | 656 (100%) |

Total percentages may not equal the sum of cell percentages because of rounding.

Selected data from Table 14 are presented in Figure 8, excluding seven agents who wrote fewer than 10 bonds each. Among the 18 agents with 10 or more bonds each, only 4 had none with property collateral and the rest accepted property collateral to secure a minority of their bonds, in proportions ranging from 3% to 38%. (Mixed collateral is not distinguished from property-only collateral in this figure.)

Figure 8
Type Of Collateral By Bond Agent
(Excluding 7 agents with fewer than 10 bonds each)



The face amount of the bond was far more influential in determining collateral type than either the borough of prosecution or the individual bond agent. Property collateral was associated primarily with the highest bond amounts, as shown by Table 15 and Figure 9. No bond less than \$5,000 had any property collateral associated with it, compared to almost half of bonds over \$10,000. Among bonds over \$10,000, 11% had both cash and property collateral and 35% had property collateral alone, bringing the total either fully or partially secured with property to 46%. Among midrange bonds (\$5,000 to \$10,000), property collateral was unusual but not unheard of: 7% of the total in this group were secured by property, either with or without cash.

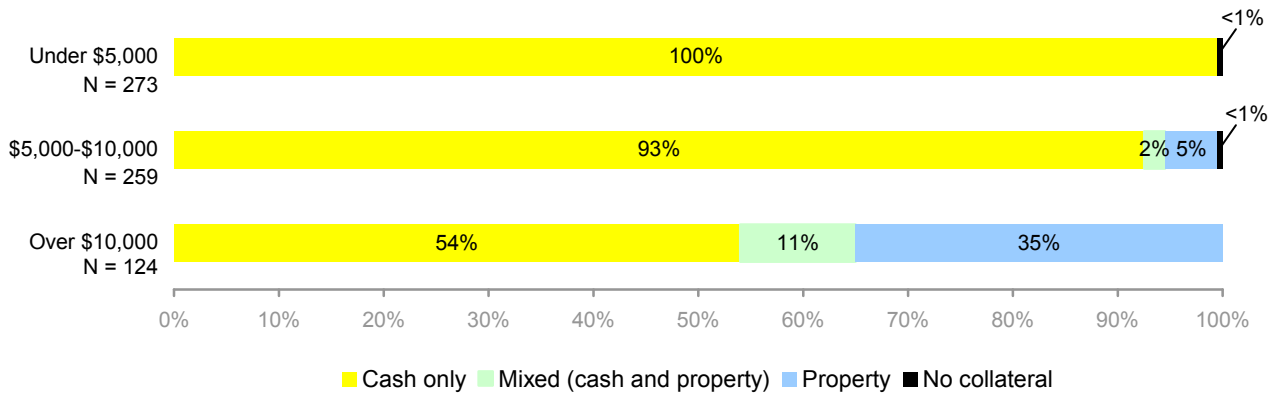
Table 15
Type Of Collateral By Bond Amount

| | Property | No property | Row totals |
|--------------------------------|----------|-------------|------------|
| Bond less than \$5,000 | | | |
| Cash | | 272 (100%) | 272 (100%) |
| No cash | | 1 (<1%) | 1 (<1%) |
| < \$5,000 column totals | 0 | 273 (100%) | 273 (100%) |
| Bond \$5,000 - \$10,000 | | | |
| Cash | 4 (2%) | 241 (93%) | 245 (95%) |
| No cash | 13 (5%) | 1 (<1%) | 14 (5%) |
| \$5,000-\$10,000 column totals | 17 (7%) | 242 (93%) | 259 (100%) |
| Bond over \$10,000 | | | |
| Cash | 14 (11%) | 67 (54%) | 81 (65%) |
| No cash | 43 (35%) | | 43 (35%) |
| > \$10,000 column totals | 57 (46%) | 67 (54%) | 124 (100%) |
| All bond amounts | | | |
| Cash | 18 (3%) | 580 (88%) | 598 (91%) |
| No cash | 56 (9%) | 2 (<1%) | 58 (9%) |
| Combined column totals | 74 (11%) | 582 (89%) | 656 (100%) |

Total percentages may not equal the sum of cell percentages because of rounding.

Figure 8 illustrates the same information visually as was presented in Table 15.

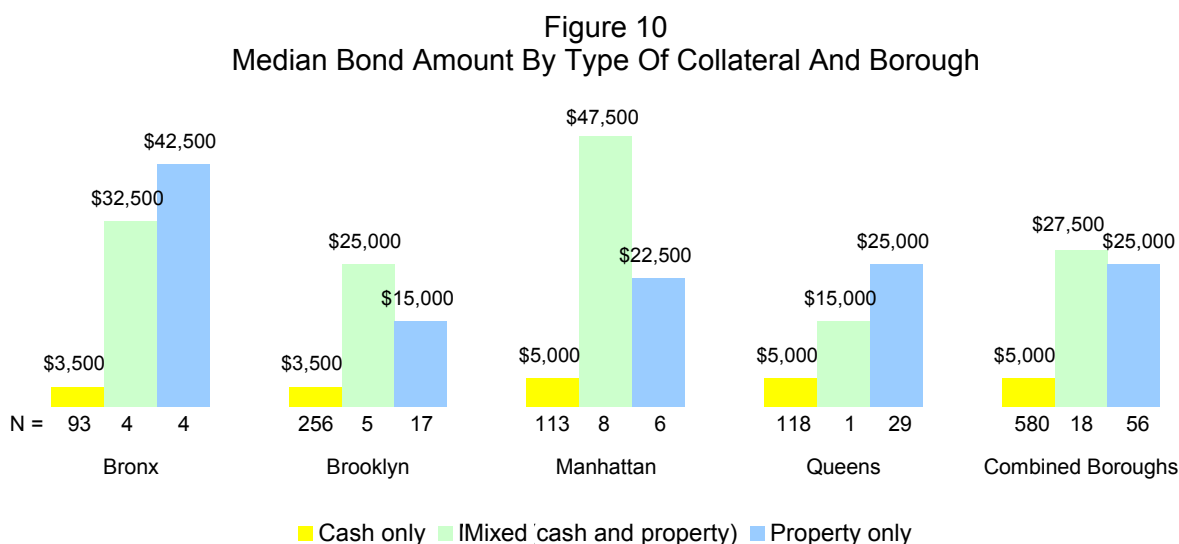
Figure 9
Type Of Collateral By Bond Amount



Bar totals may not equal 100% because of rounding.

The strong association of collateral type with the face amount of the bond is reinforced by comparing the median bond amounts for cases with each type of collateral separately, as shown in Figure 10. Median bond amounts were lowest when the collateral was cash alone (\$5,000, combined boroughs) and much higher when collateral was property alone (\$25,000) or mixed (\$27,500).

This pattern was reflected in each borough individually, except that of the two categories involving property, the category associated with the highest bond amounts was sometimes property alone (the Bronx and Queens) and sometimes mixed collateral (Brooklyn and Manhattan). The number of cases with mixed collateral types in all boroughs was very small (especially in Queens, where only one case had a bond with mixed collateral) so the results for this category are unreliable. However, it is clear that property collateral, either alone or in combination with cash, was associated with much higher bond amounts than cash collateral.



Property collateral nearly always consisted of real estate, often the home of the person co-signing the bond. Although “deed to home” or “deed to house” was sometimes recorded, more frequently the entry on the bail affidavit form was simply “deed” or “equity” or “lien,” with the value of the property often stated on the form as well.

Of the 74 bonds with property collateral, only three specified that the property was something other than real estate: One was in a Queens case, where a \$7,500 bond was secured with a car valued at \$3,000 and no additional cash. The other two were in Brooklyn, where (1) a \$7,500 bond was secured with \$720 in cash plus a 1999 Cadillac valued at \$10,000; and (2) a \$5,000 bond was secured with “an assessment of insurance settlement” in an unspecified amount.

In one additional case (also in Brooklyn) a \$35,000 bond was secured with \$25,000 in cash along with the defendant’s passport. Although the passport was entered on the form as “property” we classified the collateral in this case as “cash only” because a passport, unlike real estate or a car, cannot be sold to cover the bond if the defendant fails to appear.

2. Amount Of Cash Collateral

Unlike fees, the amount of cash collateral required to secure an insurance company bail bond is not regulated by law.⁵ Bondsmen are free to set collateral as they see fit, although no judge will sign the bail affidavit unless he or she is satisfied that the amount is sufficient to ensure the defendant's return. Because this is based on individual judgements rather than a standardized scale, amounts of cash required to secure bonds in the research sample varied widely.

Cash collateral varied from a low of \$100 to a high of \$40,000 (Table 16). About a third of the 598 bonds with cash collateral were secured with \$1,000 or less, almost two thirds were secured with \$2,000 or less, and 90% were secured with \$5,000 or less. The median collateral for all cases with cash collateral, with or without property, was \$1,500.

Although the highest collateral on a single bond (\$40,000) was found in the Bronx, both mean and median amounts for the Bronx (\$2,569 and \$1,400 respectively) were lower than in any other borough with the exception of Brooklyn (mean \$1,956; median \$1,200). The highest median collateral was found in Queens and Manhattan (\$2,000 in both).

Table 16
Amount Of Cash Collateral By Borough
(Cases with cash collateral)

| Cash collateral = | Bronx | | | Brooklyn | | | Manhattan | | | Queens | | | Total | | |
|----------------------|----------|------|------|----------|------|------|-----------|------|------|----------|------|------|----------|------|------|
| | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. |
| \$100 – \$500 | 5 | 6% | 6% | 46 | 18% | 18% | 3 | 2% | 2% | 9 | 8% | 8% | 64 | 11% | 11% |
| \$501 – \$1,000 | 26 | 27% | 33% | 68 | 26% | 44% | 21 | 17% | 20% | 26 | 22% | 29% | 141 | 24% | 34% |
| \$1,001 – \$1,500 | 20 | 21% | 54% | 48 | 18% | 62% | 16 | 13% | 33% | 16 | 13% | 43% | 100 | 17% | 51% |
| \$1,501 – \$2,000 | 20 | 21% | 74% | 26 | 10% | 72% | 25 | 21% | 54% | 14 | 12% | 55% | 85 | 14% | 65% |
| \$2,001 – \$3,000 | 7 | 7% | 81% | 37 | 14% | 86% | 20 | 17% | 70% | 21 | 18% | 72% | 85 | 14% | 79% |
| \$3,001 – \$4,000 | 8 | 8% | 90% | 11 | 4% | 90% | 18 | 15% | 85% | 4 | 3% | 76% | 41 | 7% | 86% |
| \$4,001 – \$5,000 | 3 | 3% | 93% | 11 | 4% | 95% | 2 | 2% | 87% | 8 | 7% | 82% | 24 | 4% | 90% |
| \$5,001 – \$6,000 | 1 | 1% | 94% | 2 | 1% | 95% | 2 | 2% | 88% | 7 | 6% | 88% | 12 | 2 | 92% |
| \$6,001 – \$7,000 | 1 | 1% | 95% | 2 | 1% | 96% | 3 | 2% | 91% | 2 | 2% | 90% | 8 | 1% | 94% |
| \$7,001 – \$8,000 | 0 | — | | 6 | 2% | 98% | 3 | 2% | 93% | 6 | 5% | 95% | 15 | 3% | 96% |
| \$8,001 – \$10,000 | 3 | 3% | 98% | 2 | 1% | 99% | 5 | 4% | 98% | 3 | 3% | 97% | 13 | 2% | 98% |
| \$10,001 – \$20,000 | 1 | 1% | 99% | 0 | — | | 3 | 2% | 100% | 2 | 2% | 99% | 6 | 1% | 99% |
| \$20,001 – \$40,000 | 1 | 1% | 100% | 2 | 1% | 100% | 0 | — | | 1 | 1% | 100% | 4 | 1% | 100% |
| Total = | 97 | 100% | | 261 | 100% | | 121 | 100% | | 119 | 100% | | 598 | 100% | |
| MINIMUM | \$400 | | | \$100 | | | \$400 | | | \$350 | | | \$100 | | |
| MAXIMUM | \$40,000 | | | \$25,000 | | | \$20,000 | | | \$21,240 | | | \$40,000 | | |
| MEAN | \$2,569 | | | \$1,956 | | | \$3,134 | | | \$3,099 | | | \$2,521 | | |
| MEDIAN | \$1,400 | | | \$1,200 | | | \$2,000 | | | \$2,000 | | | \$1,500 | | |
| No cash collateral | 4 | | | 17 | | | 6 | | | 31 | | | 58 | | |
| Total cases | 101 | | | 278 | | | 127 | | | 150 | | | 656 | | |

(Column totals may not equal 100% and cumulative percentages may not equal the sum of previous percentages because of rounding.)

⁵ CPL §500.10.16, which defines an insurance company bail bond, does not specify any required amount of cash or property collateral. CPL §500.10.17 defines a “secured bail bond” as a bond secured by (a) personal property at least equal to the bond amount; or (b) real property valued at twice the bond amount. A secured bail bond posted directly with the court must meet the requirements of CPL §500.10.17, but insurance company bail bonds are not covered by this statute.

3. Collateral/Bond Ratios

The amount of cash necessary to secure a bond understandably rose with the size of the bond: larger bonds require more collateral. However, there was little consistency regarding the ratio of cash collateral to the face value of the bond (collateral/bond ratio). The most commonly encountered ratios were .30 and .40 (30% and 40% of the bond amount), or somewhere in between (Table 17). More than three quarters of all bonds had a collateral/bond ratio somewhere in that range, although 36 bonds (6%) had a collateral/bond ratio below .30 and 96 bonds (16%) had a ratio greater than .40. There were eight cases for which 100% of the face amount of the bond was required in cash collateral (five of them in Brooklyn, and one in each of the other boroughs). This is puzzling because cash bail could have been posted for the same amount. (These cases are examined at the end of this report in Table 24.)

The modal ratios (ratios most frequently encountered) are in bold type in Table 17. In the Bronx and Manhattan, .40 was the modal collateral/bond ratio: 38% of Bronx bonds and 60% of Manhattan bonds had collateral set at that level. In Brooklyn and Queens, most ratios were lower than .40: 73% of Brooklyn bonds and 70% of Queens bonds with cash collateral had a collateral/bond ratio under .40, and the modal ratio in these two boroughs was .30. The median ratios reflect this difference: .40 was the median ratio in the Bronx and Manhattan, compared to .34 in Brooklyn and .32 in Queens.

Note that although Queens had the lowest median collateral/bond ratio, we saw in Table 16 that the median *amount* of cash collateral was the highest in that borough (along with Manhattan) at \$2,000. Because of the high bails set in Queens, even a relatively small proportion of the bond still resulted in as much or more money needed for collateral in Queens than anywhere else in the City.

Table 17
Ratio Of Cash Collateral To Bond Amount By Borough
(Cases with cash collateral)

| Ratio: Cash collateral/ Bond amount = | Bronx | | | Brooklyn | | | Manhattan | | | Queens | | | Total | | |
|---|-----------|------------|------------|-----------|------------|------------|-----------|------------|------------|-----------|------------|------------|------------|------------|------------|
| | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. | No. | % | Cum. |
| .10 or less | 1 | 1% | 1% | 5 | 2% | 2% | 5 | 4% | 4% | 1 | 1% | 1% | 12 | 2% | 2% |
| .11 to .29 | 5 | 5% | 6% | 12 | 5% | 7% | 2 | 2% | 6% | 5 | 4% | 5% | 24 | 4% | 6% |
| .30 | 4 | 4% | 10% | 97 | 37% | 44% | 6 | 5% | 11% | 47 | 39% | 45% | 154 | 26% | 32% |
| .31 to .39 | 19 | 20% | 30% | 77 | 30% | 73% | 13 | 11% | 21% | 30 | 25% | 70% | 139 | 23% | 55% |
| .40 | 37 | 38% | 68% | 36 | 14% | 87% | 72 | 60% | 81% | 28 | 24% | 93% | 173 | 29% | 84% |
| .41 to .49 | 6 | 6% | 74% | 5 | 2% | 89% | 5 | 4% | 85% | 3 | 3% | 96% | 19 | 3% | 87% |
| .50 | 19 | 20% | 94% | 14 | 5% | 94% | 15 | 12% | 98% | 2 | 2% | 97% | 50 | 8% | 95% |
| .51 to .74 | 4 | 4% | 98% | 10 | 4% | 98% | 2 | 2% | 99% | 2 | 2% | 99% | 18 | 3% | 98% |
| .75 or higher | 2 | 2% | 100% | 5 | 2% | 100% | 1 | 1% | 100% | 1 | 1% | 100% | 9 | 2% | 100% |
| Total = | 97 | 100% | | 261 | 100% | | 121 | 100% | | 119 | 100% | | 598 | 100% | |
| MINIMUM | | .09 | | | .03 | | | .02 | | | .07 | | | .02 | |
| MAXIMUM | | 1.00 | | | 1.00 | | | 1.00 | | | 1.00 | | | 1.00 | |
| MEAN | | .41 | | | .36 | | | .40 | | | .35 | | | .37 | |
| MEDIAN | | .40 | | | .34 | | | .40 | | | .32 | | | .37 | |

(Column totals may not equal 100% and cumulative percentages may not equal the sum of previous percentages because of rounding.)

The most important determinant of the amount of cash collateral was whether the cash fully or only partially secured the bond. The collateral/bond ratios were grouped into five categories, each representing a range of ratios: *Low*, defined as below .30; *Exactly .30*; *Between .30 and .40*; *Exactly .40*; and *High*, defined as above .40. Among bonds with cash-only collateral, the collateral/bond ratio was Low (under .30) in just 4% of cases, compared to 83% of cases among mixed-collateral bonds (Figure 11).

Overall, the median collateral/bond ratio was .37 when collateral was cash alone, but only .11 when combined with property (Figure 12). The ratio in each borough separately was also three to four times larger for cash-only than for mixed collateral. The number of cases in the mixed-collateral category was very small in each borough and citywide, but the results were nonetheless remarkably stable.

Figure 11
Distribution Of Collateral/Bond Ratios
By Type Of Collateral
(Cases with cash collateral)

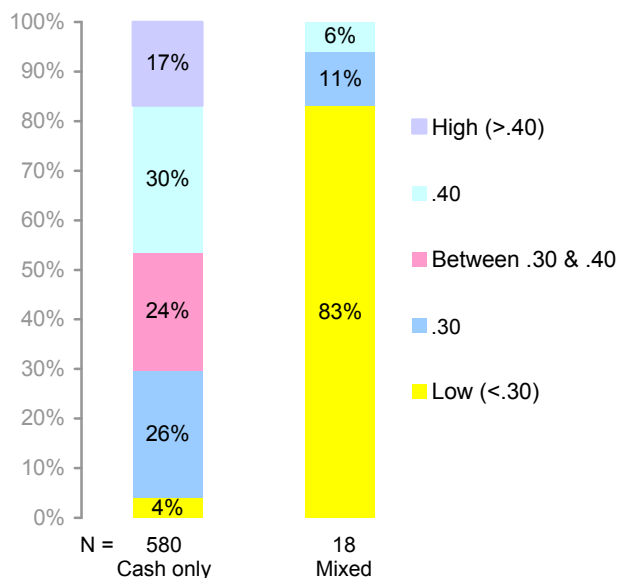
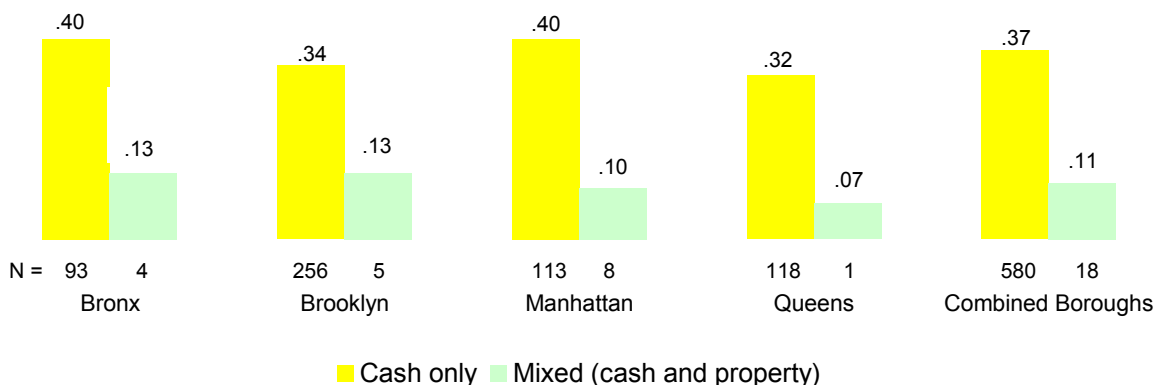
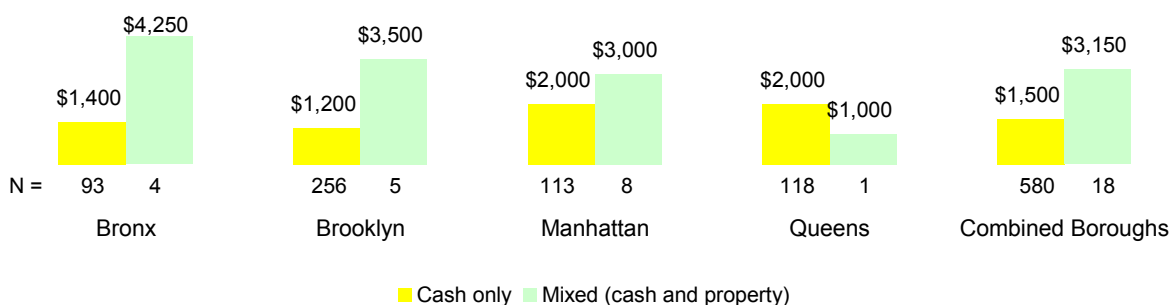


Figure 12
Median Collateral/Bond Ratio By Collateral Type And Borough
(Cases with cash collateral)



Although a smaller percentage of the bond amount was required in cash when property was also used to secure the bond, the face value of the bond was much higher in mixed-collateral cases (previously shown in Figure 10). This resulted in much higher cash collateral in cases with mixed collateral, even though the percentage of the bond amount was lower. The median amount of cash collateral overall for cash-only cases was \$1,500, compared to \$3,150 for mixed-collateral cases (Figure 13). The only borough in which this pattern was not found was Queens, where there was one mixed-collateral case: the \$1,000 cash collateral for that bond represented 7% of a \$15,000 bond, which was also secured by “equity,” with no further description.

Figure 13
Median Cash Collateral By Collateral Type And Borough
(Cases with cash collateral)



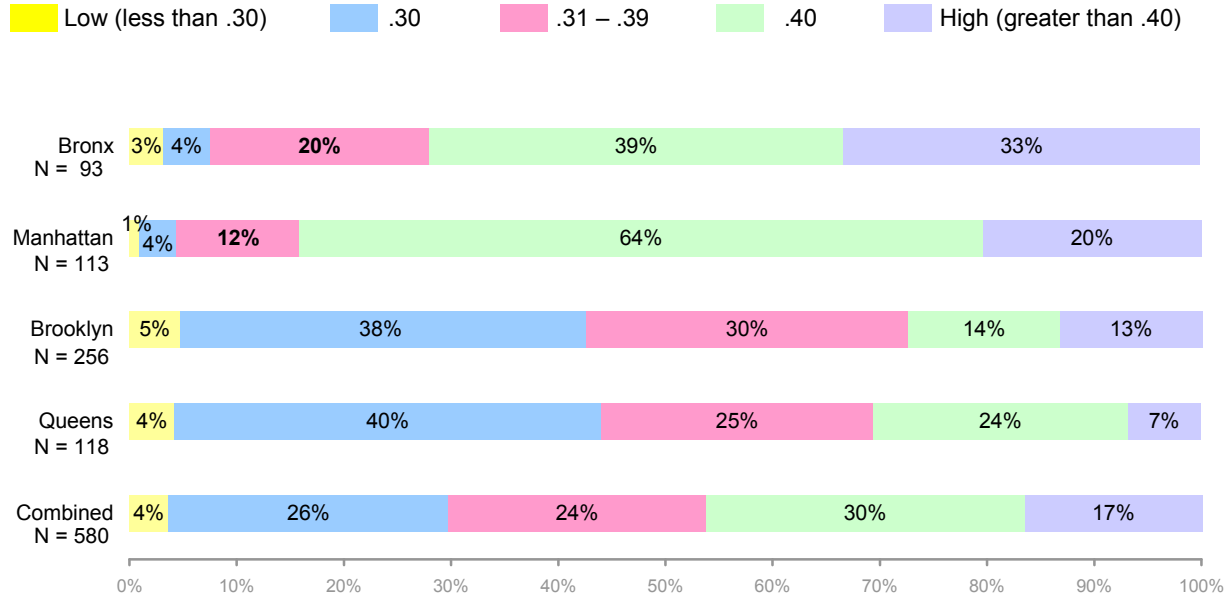
Cases With Cash-Only Collateral

In the rest of this section we restrict the analysis to cases with cash-only collateral. We have seen that any property collateral used in addition to cash to secure a bond had a huge impact on the amount and ratio of cash needed, so to investigate other factors that influenced the collateral/bond ratio it made sense to exclude the mixed collateral cases. There were only 18 bonds that had been secured by both property and cash, leaving 580 cases with cash-only collateral.

The previous analyses have already shown the distribution of ratios, from “Low” to “High,” among cash-only cases (Figure 11) and the median ratio in each borough (Figure 12). The median ratio for cash-only cases was identical in the Bronx and Manhattan at .40 (even though the median amount in dollars was higher in Manhattan, as shown in Figure 13), and ratios were lower in Brooklyn and Queens (even though the median dollar amount was as high in Queens as in Manhattan).

Figure 14 shows that the fairly even distribution of cases into the three middle ratio ranges for the combined cases, as shown in the left-hand bar of Figure 11 (repeated in the bottom bar of Figure 14), actually masks two very different patterns: one common to the Bronx and Manhattan, the other shared by Brooklyn and Queens.

Figure 14
Collateral/Bond Ratio By Borough
(Cases with cash-only collateral)



The borough order was rearranged in Figure 14 to highlight the similarities between the Bronx and Manhattan, on the one hand, and between Brooklyn and Queens, on the other hand; and to highlight differences between the two pairs. The Bronx and Manhattan had very few bonds with a ratio of .30 or less (7% and 5% respectively), whereas Brooklyn and Queens had many in this range (43% and 44%). In addition, the Bronx and Manhattan had a large majority with a ratio of .40 or higher (72% and 84% respectively), whereas Brooklyn and Queens had fewer than one in three in this range (27% and 31% respectively). This is consistent with the borough medians: .40 for the Bronx and Manhattan, and lower for Brooklyn and Queens (.34 and .32 respectively, Figure 12).

There was also much variation both among and within insurance companies (Figure 15-A). Four companies had a median ratio of .40 (Accredited, American, Evergreen, and Safety); one had a median ratio of .30 (Fairmont); and the remaining three had median ratios of .31 (Allegheny and Fidelity) or .32 (Seneca). Companies that shared the same median, however, looked very different in their distributions of ratio categories. For example, almost all of the bonds underwritten by American had a .40 collateral/bond ratio, whereas the bonds underwritten by Safety (also with a .40 ratio) were almost evenly divided among the three highest categories.

The lack of uniformity within companies suggests that they did not dictate the collateral/bond ratio that bondsmen should use. American came the closest to uniformity, with 96% of its 24 bonds (the work of 3 different agents) secured by a 40% cash collateral deposit (.40 ratio). Evergreen (1 agent) and Accredited (5 agents) also had a majority of their bonds secured by a .40 collateral deposit (70% and 62% respectively), but a sizable minority of bonds for these two companies were above or below .40. Two thirds of the bonds underwritten by Fairmont, the company with the largest number of bonds (with 6 agents), were secured by a cash/bond ratio of .30; the remainder covered the spectrum from Low to High. Safety, the company with the second largest number of bonds (also with 6 agents), had only 2% in the .30 ratio category; the remainder were nearly equally divided among the three higher categories. Of the other four companies, only one had over half in any one ratio category (Allegheny, with 53% between .30 and .40).

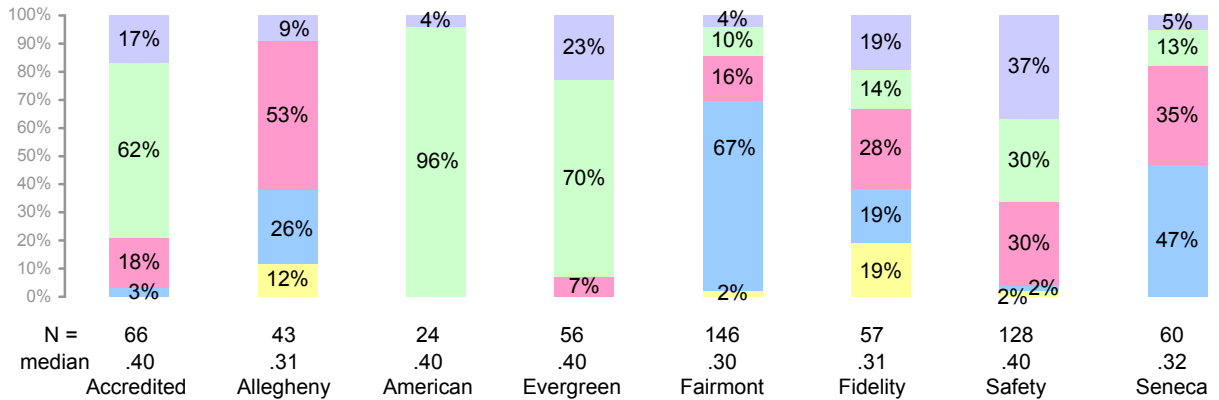
The variations found among and within insurance companies were found also among agents and within the output of individual agents (Figure 15-B). Median ratios for agents varied from .30 (6 agents) to .40 (11 agents), with medians from .31 to .38 for the remaining 6 agents. Three agents, with a small number of bonds each, required the same proportion of cash collateral to bond amount for every bond (A, S, and T — all .40), but most agents used multiple ratios. Some agents seemed to favor .30 (C, D, K, N, O, V, and W) and some .40 (I, J, L, R, U), while others seemed more flexible, requiring cash collateral in all the ratio categories (H, M, Q).

Obviously factors other than the identity of the insurance company or the individual bondsman were influential in determining the formula for cash collateral.

Figure 15
Collateral/Bond Ratio By Insurance Underwriter And Bond Agent
(Cases with cash-only collateral)

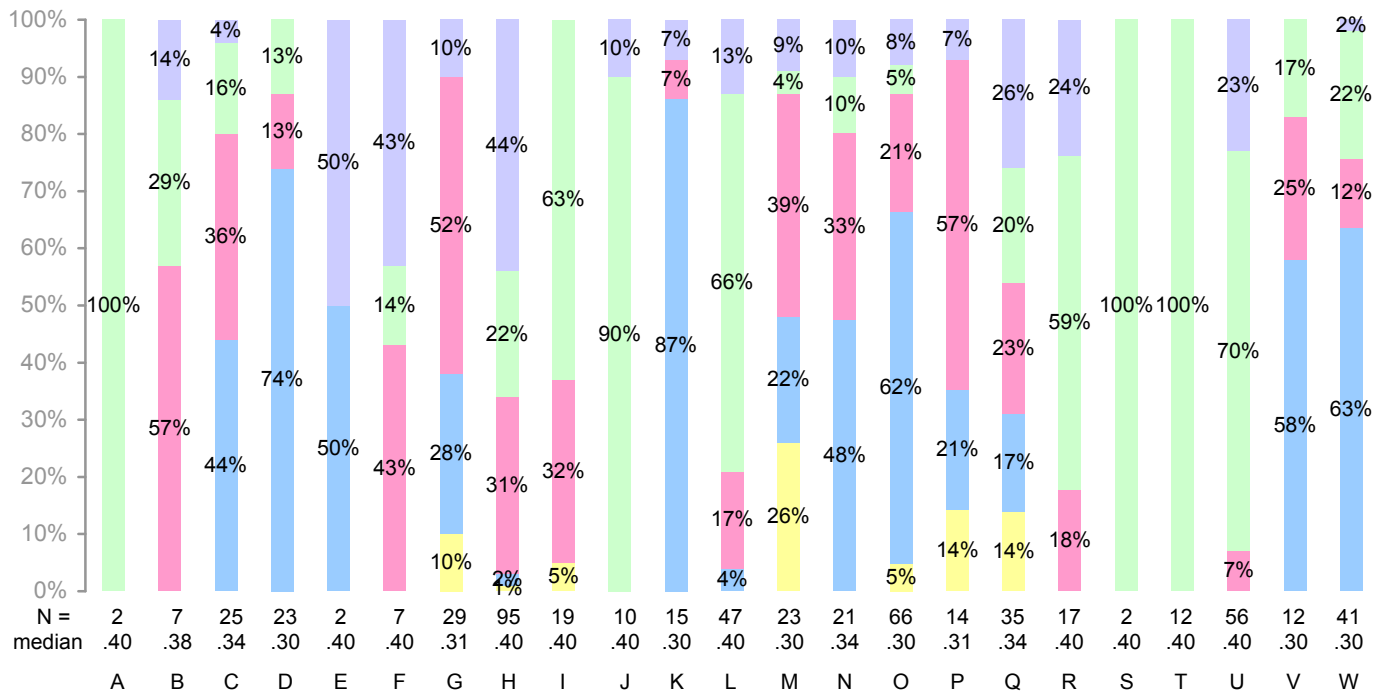
Low (less than .30) .30 .31 – .39 .40 High (greater than .40)

15-A. By Insurance Underwriter



15-B. By Bond Agent

(Agents X and Y are excluded because they had no bonds with cash-only collateral.)



Bar totals may not equal 100% because of rounding.

One such factor, in addition to borough, was the size of the bond. A smaller proportion of the bond amount was required in cash for bonds of \$10,000 and up, compared to bonds under \$10,000, as shown in Table 18 and Figure 16. The only borough in which the size of the bond apparently made no difference was Manhattan, where the ratio was .40 for small and large bonds alike. Overall, the median collateral/bond ratio was .40 for bonds under \$10,000 and .33 for bonds of \$10,000 or more. The difference was largest in the Bronx — 7 percentage points — where the ratios were the same as for the sample as a whole.

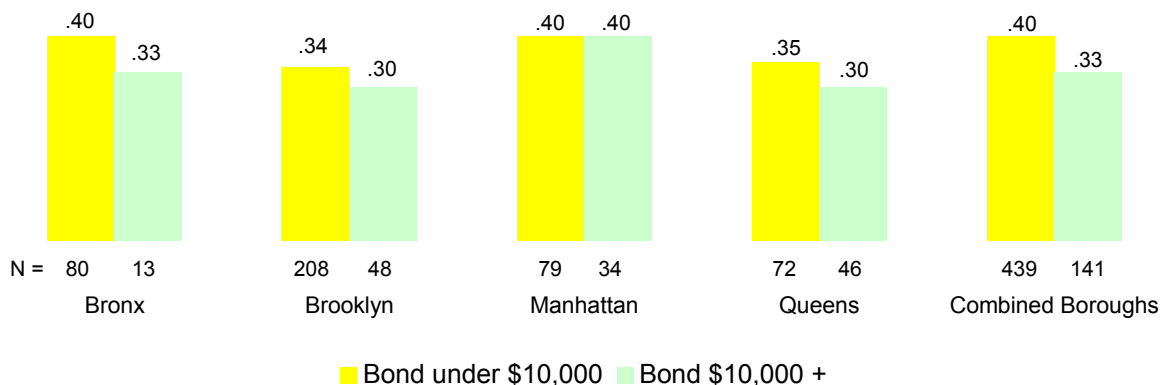
Statistical tests⁶ showed that the effects of borough and bond size on the collateral/bond ratio were statistically significant, both individually and when tested together.

Table 18
Median Collateral/Bond Ratio
By Bond Size And Borough
(Cases with cash-only collateral)

| Bond Size | Bronx | | Brooklyn | | Manhattan | | Queens | | Total | |
|----------------|-------|-------|----------|-------|-----------|-------|--------|-------|-------|-------|
| | N | Ratio | No. | Ratio | No. | Ratio | No. | Ratio | No. | Ratio |
| Under \$10,000 | 80 | .40 | 208 | .34 | 79 | .40 | 72 | .35 | 439 | .40 |
| \$10,000 + | 13 | .33 | 48 | .30 | 34 | .40 | 46 | .30 | 141 | .33 |
| Total = | 93 | .40 | 256 | .34 | 113 | .40 | 118 | .32 | 580 | .37 |

Figure 16 presents the same information graphically.

Figure 16
Median Collateral/Bond Ratio By Bond Size And Borough
(Cases with cash-only collateral)



⁶ Chi-square tests found a statistically significant relationship between borough and collateral/bond ratio and between bond size and collateral/bond ratio. A multiple regression analysis found that these two factors both had a statistically significant effect on the collateral/bond ratio, controlling for each other (not shown).

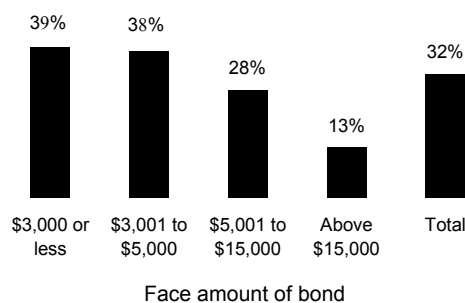
E. Weekly Reporting Requirement

About a third of the bonds with supplementary data had a weekly reporting requirement—a statement on the bail affidavit that the defendant must check in with the agent once a week, either in person or by telephone. Table 19 and Figure 17 show that defendants with smaller bonds were more likely to be required to check in with the agent than were defendants with larger bonds. Among bonds up to \$5,000, almost 40% had a weekly reporting requirement specified on the bail affidavit form, compared to 28% of mid-range bonds and 13% of bonds above \$15,000.

Table 19
Weekly Reporting Requirement By Bond Amount

| Face Amount of Bond (N = total number of bonds per bond amount category) | Number and % with weekly reporting | |
|--|---------------------------------------|-----|
| \$3,000 or less N = 227 | 89 | 39% |
| \$3,001 to \$5,000 N = 175 | 66 | 38% |
| \$5,001 to \$15,000 N = 159 | 44 | 28% |
| Above \$15,000 N = 95 | 12 | 13% |
| Total N = 656 | 211 | 32% |

Figure 17
Percent With Weekly Reporting Requirement By Bond Amount

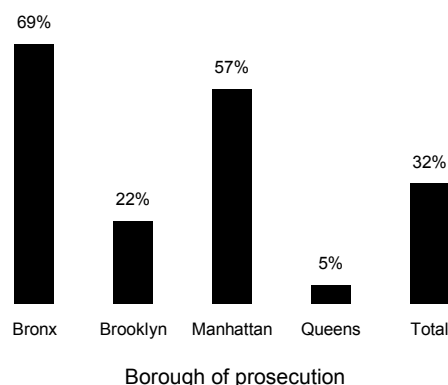


Borough differences in weekly reporting requirements were even greater. Among Bronx cases, 69% of defendants were required to check in with the agent on a weekly basis, compared to 5% in Queens, 22% in Brooklyn, and 57% in Manhattan (Table 20 and Figure 18).

Table 20
Weekly Reporting Requirement By Borough

| Borough (N = total number of bonds per borough) | Number and % with weekly reporting | |
|---|---------------------------------------|-----|
| Bronx N = 101 | 70 | 69% |
| Brooklyn N = 278 | 61 | 22% |
| Manhattan N = 127 | 72 | 57% |
| Queens N = 150 | 8 | 5% |
| Total N = 656 | 211 | 32% |

Figure 18
Percent With Weekly Reporting Requirement By Borough

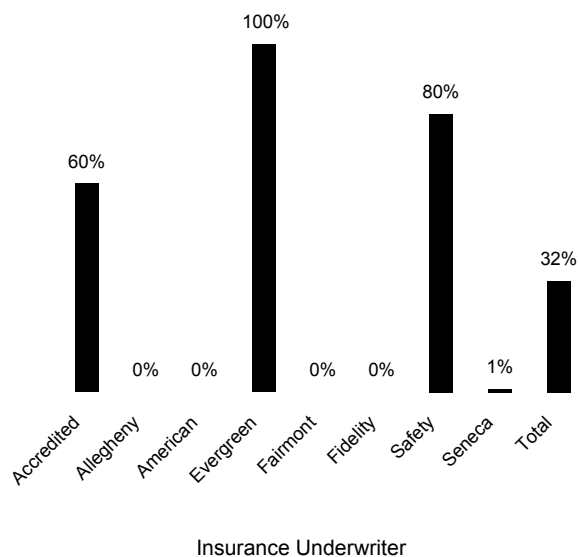


Three insurance companies—Accredited, Evergreen, and Safety—underwrote the bonds for all but one of the cases with a reporting requirement (Table 21 and Figure 19). One additional case with a reporting requirement was underwritten by Seneca. Evergreen was the only company with a reporting requirement for 100% of its bonds, but a majority of the bonds underwritten by Accredited and Safety had a weekly reporting requirement as well (60% and 80% respectively). Half of the eight companies, including the company that underwrote the largest number of bonds (Fairmont), did not have a single bond for which a reporting requirement was indicated on the bail affidavit.

Table 21
Weekly Reporting Requirement
By Insurance Underwriter

| Insurance Underwriter (N = total number of bonds per company) | Number and % with weekly reporting | |
|---|---------------------------------------|------|
| Accredited N = 73 | 44 | 60% |
| Allegheny N = 56 | 0 | 0% |
| American N = 26 | 0 | 0% |
| Evergreen N = 59 | 59 | 100% |
| Fairmont N = 168 | 0 | 0% |
| Fidelity N = 72 | 0 | 0% |
| Safety N = 133 | 107 | 80% |
| Seneca N = 69 | 1 | 1% |
| Total N = 656 | 211 | 32% |

Figure 19
Percent With Weekly Reporting
Requirement By Insurance Underwriter

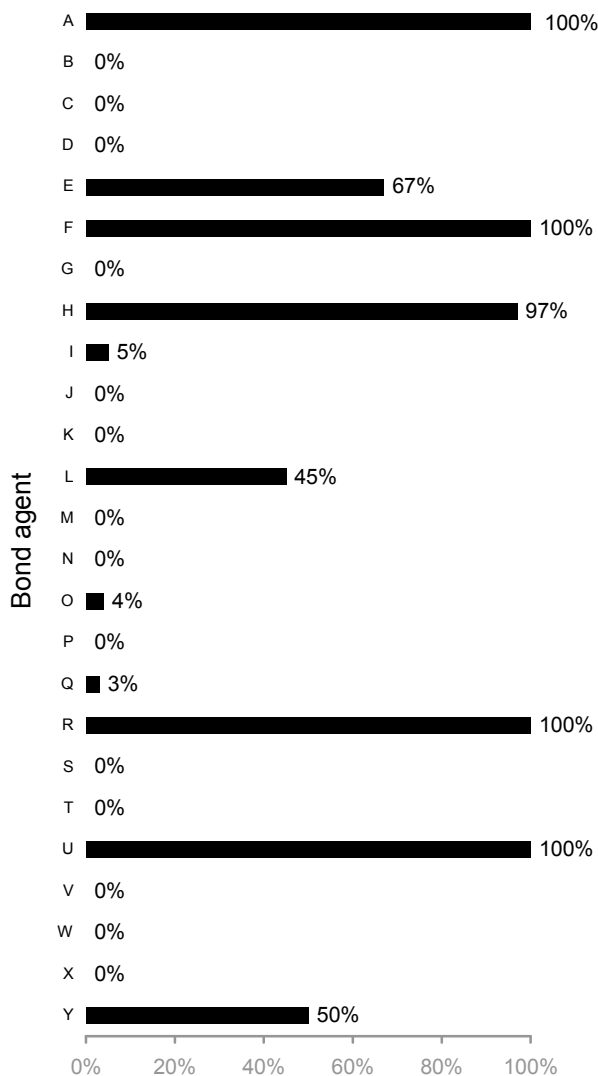


Five of the 25 agents recorded a weekly reporting requirement on virtually every bond they wrote (including H, who indicated a weekly reporting requirement on 95 of 98 bonds; Table 22 and Figure 20). Together these five agents accounted for 85% of all the bonds with a reporting requirement (180 of the total 211). The remaining 31 bonds with a reporting requirement were scattered among six other agents. Over half of the agents (14) did not indicate a weekly reporting requirement on any bond.

Table 22
Weekly Reporting Requirement
By Bond Agent

| Bond Agent | (N = total number of bonds per agent) | Number and % with weekly reporting |
|------------|---------------------------------------|------------------------------------|
| A | N= 2 | 2 100% |
| B | N= 9 | 0 0 |
| C | N= 25 | 0 0 |
| D | N= 28 | 0 0 |
| E | N= 3 | 2 67% |
| F | N= 7 | 7 100% |
| G | N= 37 | 0 0 |
| H | N= 98 | 95 97% |
| I | N= 20 | 1 5% |
| J | N= 11 | 0 0 |
| K | N= 15 | 0 0 |
| L | N= 51 | 23 45% |
| M | N= 32 | 0 0 |
| N | N= 21 | 0 0 |
| O | N= 73 | 3 4% |
| P | N= 19 | 0 0 |
| Q | N= 39 | 1 3% |
| R | N= 17 | 17 100% |
| S | N= 3 | 0 0 |
| T | N= 13 | 0 0 |
| U | N= 59 | 59 100% |
| V | N= 21 | 0 0 |
| W | N= 49 | 0 0 |
| X | N= 1 | 0 0 |
| Y | N= 2 | 1 50% |
| Total | N= 656 | 211 32% |

Figure 20
Percent With Weekly Reporting Requirement
By Bond Agent



Agent L was something of an anomaly in that he indicated a reporting requirement on 23 of his 51 bonds, nearly half. For most agents the reporting requirement seemed to be an either-or proposition: either they required it for all (or nearly all) or for none (or almost none). All of Agent L’s bonds were underwritten by Accredited, so whether he required weekly reporting had nothing to do with the underwriter. It also had nothing to do with the borough: Agent L’s bonds with and without the reporting requirement were distributed throughout all four boroughs. The deciding factor for Agent L was the date: all of his bonds posted on September 9, 2005, or earlier had a reporting requirement, and all bonds (except one) posted after that date did not have one. The one bond with a reporting requirement posted by Agent L after 9/9/05 was in late December, and it was the last one he wrote during the study period; perhaps he had decided to resume his earlier practice. The presence or absence of a reporting requirement bore no relationship to the date of the bond for any other agents (not shown).

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IV. ESTIMATING EFFECTIVE CASH DISCOUNTS

We now turn to the final research question posed in the Introduction to this report: how could cash alternatives set by the courts be devised so that they require no more cash to gain release than would be needed to buy a bond, accounting for variations in fees and collateral requirements?

The bail-making report concluded with the general recommendations that the use of cash alternatives be expanded and that the discount be at least 50% of the bond. The observation was made that higher bail amounts would require larger discounts (Phillips 2010a, p. 73) — but no attempt was made to offer more specific guidance because the data were not yet in from all boroughs. With the additional data collected for the current analyses we are now able to fine-tune these recommendations.

A cash alternative set at 50% of the bond would require the same cash outlay as a bond *if* the bondsman charged a 10% fee *and* 40% in cash collateral. With bail set at \$3,000/\$1,500, for example, a defendant who could afford to give the bond agent a \$300 fee plus \$1,200 in cash collateral could also afford to post cash bail of \$1,500 — thereby avoiding the commercial fee, as well as the possibility of being returned to jail if the bondsman decided to revoke his bond. In this example, 50% taken off the bond amount would be an “*effective cash discount*” — *a discount large enough to be competitive with bail bonds and to remove the financial incentive for posting a bond rather than cash.*

However, fees are lower than 10% for bonds over \$3,000 and collateral is often less than 40% of the bond, so for many cases a cash discount of 50% would not be effective, by this definition. To take an illustration from the research sample: in a Brooklyn case with bail set at \$5,000/\$2,500, the defendant’s father paid \$2,260 for a bond (\$460 fee plus \$1,800 collateral) — \$240 less than the cash alternative. The 50% cash discount was not enough in this case to compete effectively with the bondsman’s offer, even though the difference was only a few hundred dollars.

It could be useful to the courts to know how large a discount would be necessary to be “effective,” as defined here, for a given proportion of cases. Data presented in the previous sections suggest that the size of the discount that would be sufficient for this purpose might vary by borough and by the size of the bond. For three hypothetical levels of cash discounts — 50%, 60%, and 70% — we examined how effective each would have been when measured against the actual cash outlays made for the bonds in the research sample.

The results, presented in Table 23, show that a 50% discount was not usually enough to eliminate the financial advantage of the bond. Citywide, a 50% discount would have resulted in a cash alternative equal to or less than the cash outlay for the bond in 39% of bonds under \$10,000, and in only 7% of bonds of \$10,000 or more.

Moreover, there was wide variation by borough. In Brooklyn, where we found relatively low collateral/bond ratios (median .30), a 50% discount would have been particularly ineffective, as it would have matched the bondsman’s offer in only 29% of cases. In the Bronx, on the other hand (with a median .40 collateral/bond ratio), a 50% discount would have been effective for a majority (63%) of the bonds. For bonds of \$10,000 and up, a 50% discount would have been effective for fewer than 10% of the bonds in each borough.

Table 23
Effectiveness Of Hypothetical Cash Discounts Of 50%, 60%, And 70%
(Cases for which a bond was posted)

| If a cash discount had been set at: | For example: | In each of the four largest boroughs | The number and proportion of bond cases for which this discount would have been <u>effective</u> (equal to or less than the amount required up front by the bondsman): | |
|-------------------------------------|--------------------------------------|--------------------------------------|--|-----------------------------|
| | | | Bond less than \$10,000 | Bond \$10,000 or higher |
| 50% | 1000/500 5000/2500 10,000/5000 | Bronx | 50 (63%) N = 80 (100%) | 1 (9%) N = 11 (100%) |
| | | Brooklyn | 58 (29%) N = 203 (100%) | 4 (9%) N = 46 (100%) |
| | | Manhattan | 37 (47%) N = 79 (100%) | 3 (9%) N = 32 (100%) |
| | | Queens | 24 (34%) N = 71 (100%) | 1 (2%) N = 45 (100%) |
| | | Citywide | 169 (39%) N = 433 (100%) | 9 (7%) N = 134 (100%) |
| 60% | 1000/400 5000/2000 10,000/4000 | Bronx | 78 (98%) N = 80 (100%) | 9 (82%) N = 11 (100%) |
| | | Brooklyn | 172 (85%) N = 203 (100%) | 18 (39%) N = 46 (100%) |
| | | Manhattan | 77 (97%) N = 79 (100%) | 28 (88%) N = 32 (100%) |
| | | Queens | 59 (83%) N = 71 (100%) | 18 (40%) N = 45 (100%) |
| | | Citywide | 386 (89%) N = 433 (100%) | 73 (54%) N = 134 (100%) |
| 70% | 1000/300 5000/1500 10,000/3000 | Bronx | 79 (99%) N = 80 (100%) | 11 (100%) N = 11 (100%) |
| | | Brooklyn | 202 (<100%) N = 203 (100%) | 44 (96%) N = 46 (100%) |
| | | Manhattan | 79 (100%) N = 79 (100%) | 32 (100%) N = 32 (100%) |
| | | Queens | 71 (100%) N = 71 (100%) | 45 (100%) N = 45 (100%) |
| | | Citywide | 431 (<100%) N = 433 (100%) | 132 (99%) N = 134 (100%) |

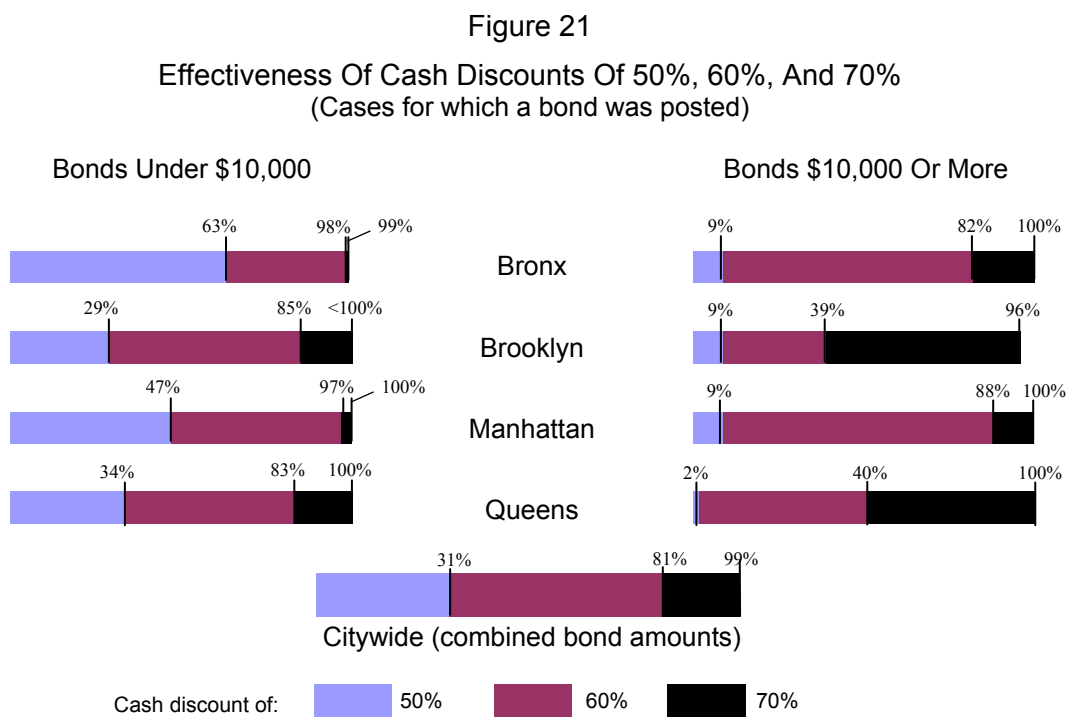
What about a 60% cash discount? By discounting the bond amount by an additional 10%, the courts could greatly increase effectiveness. Citywide, a 60% discount would have been effective in matching the cash outlay for 89% of bonds under \$10,000 and for 54% of larger bonds. In the Bronx and Manhattan, a 60% discount would have increased the level of effectiveness to nearly 100% for bonds under \$10,000, and to over 80% for larger bonds.

In Brooklyn and Queens, however, even a 60% cash discount would have been ineffective for more than half of the bonds of \$10,000 or more. In order to be effective for the majority of large bonds in Brooklyn and Queens, the cash discount would have to be still larger. If the discount were increased to 70%, it would have lowered the cash bail to competitive levels for all of the 45 bonds of \$10,000 or more in Queens, and for nearly all (44 out of 46) in Brooklyn.

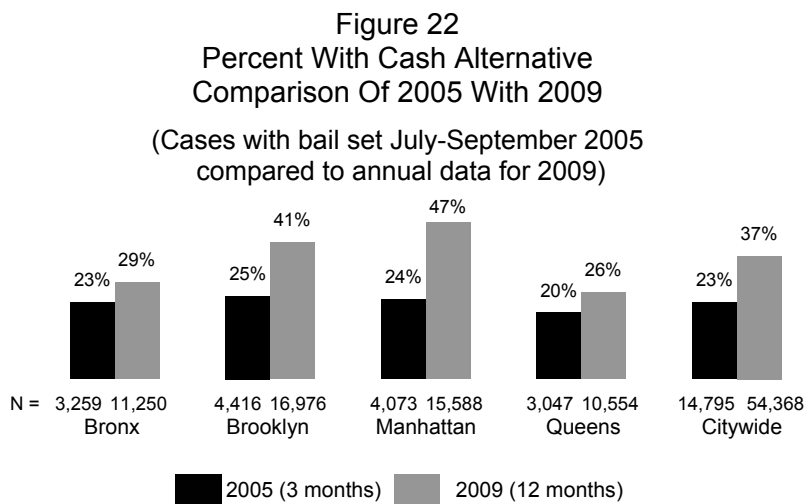
Yellow highlighting has been used to point to the lowest level of cash discounting that would be necessary to achieve effectiveness of at least 80% — i.e., that would result in a cash alternative no greater than the cash outlay needed in at least 80% of bonds. As shown, a 60% discount would be necessary and sufficient for this purpose in every borough at lower bond levels and for all bonds in the Bronx and Manhattan. In Brooklyn and Queens, meeting the same

objective would require a 70% discount for large bonds. One could use a lower criterion — effectiveness for a simple majority, for instance — but our research indicates that even the more relaxed criterion would not usually be met using a 50% discount.

The same data are displayed graphically in Figure 21. A bar has been added (not presented in Table 23) showing the results for all bond amounts combined: a 50% discount would have been effective for 31% of all bonds; a 60% discount would have been effective for 81% of all bonds; and a 70% discount would have been effective for 99% of all bonds.



At present, cash alternatives at any level — effective or not — are the exception in New York City courtrooms, although their use has increased since this research was initiated. Among cases with bail set citywide, 23% had a cash alternative in 2005, compared with 37% in 2009, the latest year for which data are available (Figure 22). Cash alternatives are most common in Manhattan, where their use has nearly doubled since 2005 (from 24% to 47% of cases with bail set).



When cash alternatives are set, the discount is rarely over 50% of the bond amount, and discounts have gotten smaller even as the use of cash alternatives has expanded. In 2005, 70% of all cash discounts were 50% or less, and that proportion was up to 89% in 2009 (Table 24). In three of the four boroughs, the tendency has intensified to set cash alternatives at exactly 50% of the bond: in the Bronx the proportion set at exactly 50% rose from 34% in 2005 to 73% in 2009; in Brooklyn the increase was from 59% in 2005 to 72% in 2009. Only in Manhattan did the proportion of cash alternatives set at exactly 50% decline (from 49% to 40%). The median cash discount for Manhattan in 2009 was .42 — the only median in either year less than .50.

Table 24
Size Of Cash Discount By Borough
Comparison Of 2005 With 2009
(Cases with cash alternative)

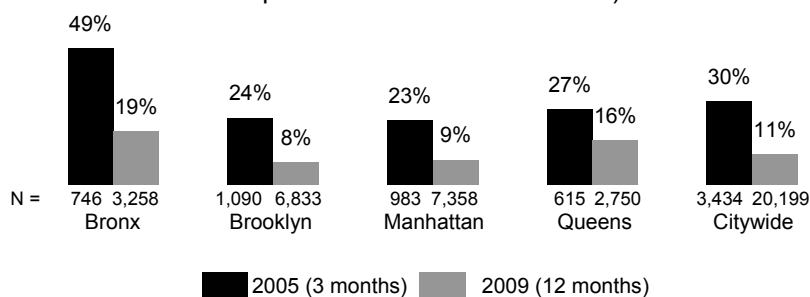
| 2005 (3 months) | | | | | |
|------------------------|------------|--------------|------------|------------|--------------|
| Size of Discount | Bronx | Brooklyn | Manhattan | Queens | Citywide |
| Less than 50% | 122 (16%) | 182 (17%) | 276 (28%) | 155 (25%) | 735 (21%) |
| 50% | 256 (34%) | 642 (59%) | 482 (49%) | 294 (48%) | 1,674 (49%) |
| Greater than 50% | 368 (49%) | 266 (24%) | 225 (23%) | 164 (27%) | 1,025 (30%) |
| Total | 746 (100%) | 1,090 (100%) | 983 (100%) | 615 (100%) | 3,434 (100%) |
| mean / median | .56 / .50 | .51 / .50 | .49 / .50 | .50 / .50 | .51 / .50 |

| 2009 (12 months) | | | | | |
|-------------------------|--------------|--------------|--------------|--------------|---------------|
| Size of Discount | Bronx | Brooklyn | Manhattan | Queens | Citywide |
| Less than 50% | 259 (8%) | 1,345 (20%) | 3,709 (50%) | 511 (19%) | 5,824 (29%) |
| 50% | 2,392 (73%) | 4,919 (72%) | 2,957 (40%) | 1,812 (66%) | 12,080 (60%) |
| Greater than 50% | 607 (19%) | 569 (8%) | 692 (9%) | 427 (16%) | 2,295 (11%) |
| Total | 3,258 (100%) | 6,833 (100%) | 7,358 (100%) | 2,750 (100%) | 20,199 (100%) |
| mean / median | .52 / .50 | .48 / .50 | .43 / .42 | .49 / .50 | .47 / .50 |

Percentages may not total 100% because of rounding.

In every borough, including Manhattan, the proportion of large discounts (greater than 50%) declined from 2005 to 2009, as shown in Table 24 and illustrated in Figure 23. The city-wide decline was from 30% to 11%. In the Bronx almost half of cash discounts were greater than 50% in 2005; even after a decline of 30 percentage points, this was still the borough with the highest proportion of large discounts in 2009 (19%).

Figure 23
Percent Of Cash Alternatives With Discount Greater Than 50%
Comparison Of 2005 With 2009
(Cases with a cash alternative July-September 2005
compared to annual data for 2009)



The assumption underlying the effort to calculate an effective cash discount is that defendants will post cash rather than seeking out the services of a bondsman if they can do so for the same or less money up front. The bail-making study confirmed this assumption indirectly by presenting data showing that defendants were more likely to make bail, and more likely to post cash rather than a bond, when a cash alternative was set (Phillips 2010a, Figures 15 and 16). Further, it was found that the larger the cash discount (i.e., the lower the cash alternative) the stronger the effect (op. cit, Figure 18).

In the current research we tested the assumption directly by comparing the cash outlay made for each bond (the fee plus the cash collateral) with the amount of cash that would have been needed to post cash bail. In most cases, the cash outlay for the bond was less than it would have taken to post cash bail, as expected. Of the 638 bonds in the study sample with fee data, all but 13 were obtained for less cash up front than would have been needed to post cash bail. This is a strong indication that given an effective cash discount, defendants would make the cost-effective choice and post cash rather than buying a commercial bond.

However, the exceptions may point to situations in which defendants pay much more for release than necessary. Table 25 describes the 13 cases in which the defendant apparently could have posted cash for the same or less money than the bondsman collected. The cases fall into two general patterns:

(1) In five of the cases, a cash alternative had been offered that would have cost the defendant anywhere from the same amount as was paid out for the bond (Case 11) to far less than the cash needed for the bond (Case 6). It could be that somehow the defendant was not made aware of the cash alternative — or the explanation may be more insidious. In at least two cases (Cases 5 and 6), the later arrest and conviction of the bond agent suggests that he may not have actually collected the collateral listed on the bail affidavit. In 2009 Agent U was convicted of felony charges for making false claims on bail affidavits regarding the amount of collateral he had collected for a large number of bonds in cases dating from 2003 and 2004.⁷ If the \$7,000 cash collateral was not really collected in Case 6, then one can understand how the client could have preferred the \$1,460 fee to the cash alternative of \$2,000.

(2) In the other eight cases, no cash alternative had been offered, but it would have been less costly to post the entire bond amount in cash than to meet the bondsman's requirements for extremely high cash collateral. In all eight cases, oddly, the cash collateral was equal to 100% of the bond amount. The same bond agent (Agent H) was responsible for half of the cases in this group, but this was a tiny proportion of his 98 sample bonds (the largest number for a single agent). False affidavits do not offer a plausible explanation because there would be little incentive to claim that 100% of the bond was collected in collateral, given that the courts routinely sign off on much lower percentages. (The possibly false affidavits filed by Agent U claimed more reasonable percentages for cash collateral.) A clerical error by the bondsman could be to blame, but the puzzle remains because one would expect the signing judge to notice an error of this magnitude.

⁷ Italiano 2009; *North Country Gazette* 2009. Agent U was convicted in 2009 for filing false affidavits in 65 cases during 2003 and 2004, the two years prior to this research. In those cases, he claimed to have collected collateral when in fact he did not, or to have collected much more collateral than he actually did. He could have continued this behavior into 2005, the year of the sample cases, as he was not arrested until 2009 (Phillips 2010a, fn 18, p. 54).

Table 25
Bond Cases In Which The Defendant (Apparently) Could Have Posted Cash

| | Bond Amount | Cash Alternative | Cash Up Front For Bond (fee + cash collateral) | Agent | Upfront Savings By Posting Cash ^a |
|------------------|-------------|--------------------------------|--|-------|--|
| Bronx | | | | | |
| Case 1 | \$15,000 | \$5,000 (67% cash discount) | \$5,160 (\$1,160 fee + \$4,000 collateral) | M | \$160 |
| Case 2 | \$5,000 | none | \$5,460 (\$460 fee + \$5,000 collateral) | H | \$460 |
| Brooklyn | | | | | |
| Case 3 | \$7,000 | \$3,500 (50% cash discount) | \$5,180 (\$620 fee + \$4,560 collateral) | Q | \$1,680 |
| Case 4 | \$7,500 | none | \$8,140 (\$640 fee + \$7,500 collateral) | H | \$640 |
| Case 5 | \$5,000 | \$2,500 (50% cash discount) | \$3,000 (\$460 fee + \$2,400 collateral) | U | \$500 |
| Case 6 | \$20,000 | \$2,000 (90% cash discount) | \$8,460 (\$1,460 fee + \$7,000 collateral) | U | \$6,460 |
| Case 7 | \$1,000 | none | \$1,100 (\$100 fee + \$1,000 collateral) | F | \$100 |
| Case 8 | \$5,000 | none | \$5,460 (\$460 fee + \$5,000 collateral) | J | \$460 |
| Case 9 | \$1,500 | none | \$1,650 (\$150 fee + \$1,500 collateral) | H | \$150 |
| Case 10 | \$10,000 | none | \$10,860 (\$860 fee + \$10,000 collateral) | Q | \$860 |
| Manhattan | | | | | |
| Case 11 | \$3,000 | \$1,500 (50% cash discount) | \$1,500 (\$300 fee + \$1,200 collateral) | L | — |
| Case 12 | \$1,000 | none | \$1,100 (\$100 fee + \$1,000 collateral) | H | \$100 |
| Queens | | | | | |
| Case 13 | \$7,500 | none | \$8,160 (\$660 fee + \$7,500 collateral) | G | \$660 |

^a Additional savings would have been realized at the end of the case (assuming no forfeiture because of failure to appear) when all but 3% would have been refunded to convicted defendants (the entire amount in the absence of a conviction). At best, the bondsman would have returned only the collateral, keeping the fee. At worst, the bondsman could have also kept a good portion of the collateral in extra fees for such things as missing a weekly check-in, or for returning the defendant to jail.

V. SUMMARY, CONCLUSIONS, AND IMPLICATIONS FOR POLICY

Of 788 cases with an arrest during the study period (July through September 2005) and a bail bond posted prior to December 31, 2005, data were presented for 656 cases for which supplementary bond information was collected from case files. In the remaining 132 bond cases, case files were not available. The conviction rate was somewhat higher among the cases for which we had case files, which was to be expected because sealed cases were not always available. However, a conviction was obtained in the majority of cases in both groups — the ones for which case files were and were not provided — and the two groups were similar in other respects as well. We concluded that the cases without supplementary bond data did not represent a systematic exclusion of sealed cases, but in general the exclusions occurred by a more random process. This gives us confidence in generalizing the findings to all bonds posted in New York.

Eight insurance companies underwrote all the bonds in the study sample, and the bonds were written by 25 individual agents. Although most agents worked with only one insurance company, all but one of the insurance companies had several affiliated agents. There was some specialization by borough, but most of the insurance companies had bonds in every borough, and most agents wrote bonds in more than one borough. This brought into question our assumption that family members seeking a bondsman would turn to the nearest storefront with a “Bail Bond” sign in the window after leaving the courthouse where bail had been set. The agent was located in a different borough from the courthouse nearly half the time. This was particularly true of Bronx bonds, only a third of which were written by an agent with a Bronx address.

The home address of the family member who co-signed for the bond provided a possible explanation for a tiny fraction of the cases in which the bondsman did not appear to be located near the court. In these few cases, the indemnitor lived in the same borough as the bond agent — not the borough where the courthouse was — leading one to guess that she (likely the defendant’s mother) looked for an agent close to home rather than close to court. For most cases in which the agent and the court were located in different boroughs, however, a plausible explanation is that the agent had several offices throughout the city. This was not evident from the bail affidavits because each agent (with a single exception) listed only one address on all affidavits. As a result, we are led to believe that the information on the bail affidavit did not necessarily reflect the location where business was conducted. This impression was reinforced by a look at the websites of the bail bond companies whose agents are represented in the study sample; some of them advertise multiple locations.

The research focused primarily on the financial costs of commercial bonds, partly because this aspect of the transaction is most salient for clients and looms large in criticisms of the bail bond industry — but also partly because this is virtually the only information, other than the names and addresses of indemnitors and bond agents, that the law requires agents to include on the bail affidavit.⁸ The law does *not* explicitly direct agents to specify what sort of supervision they will exercise over defendants, but because a number of agents did specify on the affidavit that they require defendants to check in on a weekly basis, this report presents the available data on check-in requirements in addition to the more extensive analyses of fees and collateral.

⁸ CPL §520.20.4(a) specifies that the affidavit justifying an insurance company bail bond must state the amount of the premium; name, address, and occupation of all indemnitors; and “all security and all promises of indemnity.”

About a third of the sample bonds had a weekly check-in requirement, with large borough variations. The data seem to indicate that a check-in requirement was the norm in the Bronx and was almost never seen in Queens; and that smaller bonds were more likely to have a check-in requirement than large bonds (which would be counter to the idea that large bonds warrant a higher level of supervision). However, it turned out that the identity of the bond agent — not the borough or bond amount — was the deciding factor. A few agents included a check-in requirement on all or almost all of their bonds regardless of borough or bond amount. It is possible that the agents who did not include this information on bail affidavits did in fact require defendants to report to them on a regular basis, but omitted the information from the affidavit. Because of doubts about the completeness of check-in data, as well as bondsmen's office addresses, it is difficult to know what implications to draw from either of these items.

The research was on firmer ground in examining the fees and collateral collected by bondsmen. Because this information is required by law, it was rarely missing from bail affidavits. And because bondsmen could not stay in business without charging a fee, we could assume that when the fee was missing from the affidavit (as it was in 18 cases, or less than 3% of the total), the omission was due to clerical error. Information about collateral was missing from only two bond cases. Although we had reason to question the amounts entered on a few of the bail affidavits, we had some faith in their accuracy because most fees conformed to New York State regulations, and the collateral amounts fell into recognizable patterns.

Fees charged for bonds were lowest in the Bronx and highest in Queens, which follows from the fact that bond amounts were also lowest in the Bronx and highest in Queens. The overwhelming majority of fees were set at exactly the maximum allowed by law. There were 33 illegally high fees (5% of the total), two thirds of them in Brooklyn. The overcharges were usually the result of taking 10% of the entire bond amount, including amounts over \$3,000, which should have been charged at a lower rate. In an additional few cases, the legal fee was apparently rounded up to the next hundred (for example, two cases in which \$4,760 was rounded up to \$4,800 for a \$75,000 bond). The small size of the overcharges — along with the fact that the same few agents also occasionally charged a bit less than the legal maximum — suggests that these particular agents took a casual approach to the fee calculation, not that they were engaged in wholesale fraud. However, even a small overcharge can be difficult to absorb for defendants with few resources, and such “mistakes” could be easily avoided with stronger oversight by the courts. In these cases, the overcharge was in plain view on the bail affidavit signed by the judge.

Intentional fraud, on the other hand, would not have been detected in our research, nor could it be spotted easily by the courts, because it would likely involve falsified bail affidavits. Agent I, for example, apparently charged no illegal fees for bonds in the study sample — at least according to information on the bail affidavits. However, five years later this agent was indicted for overcharging defendants: he wrote the legal fee of \$860 on the bail affidavit for each of two \$10,000 bonds, but he actually charged \$1,360 in the first case and \$1,160 in the second (Meyrowitz 2010; Thompson 2010). The same agent was also charged with stating on the bail affidavit that he had collected much more in collateral than he actually did. Another agent in the study sample, Agent U, had been arrested the previous year for overstating on bail affidavits the amount of collateral he collected (Italiano 2009; *North Country Gazette* 2009). Agent U was eventually convicted and sentenced to 6 months in jail and 5 years probation; the case of Agent I is still being adjudicated. The indictments did not cover any bonds in the study sample, but two bonds written by Agent U raise suspicions because the cash alternative in each case was lower

than the collateral claimed on the affidavit. It is troubling that two bondsmen out of such a small sample were caught for engaging in illegal practices; we have no way of knowing if others did the same and were not caught.

The amount of collateral collected by bondsmen raises different issues: first, it is not regulated by law, so the variations are greater and “improperly high” collateral is difficult to define; second, bondsmen sometimes accept the deed to a home or some other type of property instead of or along with cash, which affects cash collateral amounts.

Property played a much bigger role as collateral in Queens than in any other borough, and it was also less likely to be mixed with cash collateral. One out of every five bonds in Queens was secured with property (only one in conjunction with cash). This can be explained partly by the high bail amounts in Queens: almost half of all bonds over \$10,000 were secured with property, and Queens had a disproportionate number of large bonds. In addition, Queens defendants are more likely to have family or friends with real estate to offer as collateral. The research showed that the large majority of co-signers lived in the same borough where the case was being prosecuted, so the co-signer for a Queens defendant was likely to be a Queens resident — and Queens has the highest home ownership rate of the four boroughs.⁹ Few residents of the other three boroughs owned property that could be used as collateral.

Most bonds, however, were secured with cash, and 88% were secured by cash alone. Cash collateral was usually equal to 30% or 40% of the bond amount, but was sometimes much lower (all the way down to 2%) and sometimes much higher (up to 100%). Unlike reporting requirements, differences in collateral/bond ratios could *not* be traced to differences among agents, as most agents used a wide range of ratios. The lowest ratios were found among cases for which the cash was used as partial security, along with property. The highest ratio — 100% — was found in a handful of cases for which no explanation was apparent, other than clerical error.

Among cases with cash-only collateral, the collateral/bond ratios were lower in Queens and Brooklyn (median ratios were .32 and .34, respectively), compared to the Bronx and Manhattan (.40 in each). The size of the bond also influenced the ratio: when the bond was large, the bondsman collected a smaller percentage as cash collateral. Only in Manhattan did bondsmen require as large a percentage for bonds of \$10,000 or more as they did for smaller bonds (40% regardless of bond size).

These findings were used to devise a tool to enable the courts to set cash alternatives at a level calculated to remove the financial incentive for posting a bond rather than cash. We computed the proportion of bond cases in the sample for which a cash discount set at various levels would have been “effective” — that is, would have resulted in a cash alternative equal to or less than the amount actually paid to the bondsman for the fee and collateral. It turned out that a 50% cash discount would have met this objective for fewer than a third of the sample bonds. Increasing the cash discount to 60% would have been effective for over 80% of the bonds overall, including even large bonds in Manhattan and the Bronx. For bonds of \$10,000 and up in Brooklyn and Queens, however, another bump up in the cash discount — to 70% — would be required in order to provide an effective cash alternative for the majority of cases in this group. A 70% dis-

⁹ According to 2000 U.S. Census data, owner-occupied home ownership rates for New York City were 43% for Queens, compared to 20% (Bronx), 20% (Manhattan), and 27% (Brooklyn). Staten Island had the highest rate in the City (64%), but was not included in the research (US Census Bureau: State and County QuickFacts).

count would have lowered the cash bail enough to meet the bondsman's price for almost every bond of \$10,000 and up in Brooklyn and Queens.

We define an "effective cash discount" as the lowest discount necessary to reduce cash bail to no more than would be required to post a bond in an estimated four out of five cases. By this definition, 50% is not an effective cash discount, not in any borough (although it comes closest in the Bronx) and not even for bonds under \$10,000. Simply by increasing the discount to 60%, the courts could enable a large majority of defendants who would otherwise post a bond to post cash bail instead. For large bonds in Brooklyn and Queens, however, the effective cash discount was found to be 70%, because of the lower cash collateral normally collected on large bonds in these two boroughs.

These results were compared with the reality in New York City courts, which is that cash alternatives are not set in the majority of bail cases, and when they are set, they are not usually effective by our definition. Although cash alternatives were set more frequently in 2009 than they were four years earlier, they were still the exception everywhere in the City, especially in Queens and the Bronx. Just over a third of bail cases citywide in 2009 were set with a cash alternative.

Moreover, the discounts for cash alternatives are smaller than they once were. Among cases with cash alternatives, the proportion with a discount larger than 50% has dropped from almost a third in 2005 to about a *tenth* in 2009. It would appear that the 50% discount is becoming more and more automatic, when cash alternatives are set at all: in 2005, 49% of all cash discounts were exactly 50%; that proportion rose in 2009 to 60% citywide (over 70% in the Bronx and Brooklyn).

The implications of these trends are mixed: the growth in the use of cash alternatives encourages cash bail in place of bonds, but a smaller fraction of the cash discounts are large enough to be effective. In fact, in spite of the rise in cash alternatives, effective cash discounts are less frequently seen in New York City courtrooms now than when this study was initiated.¹⁰

The report concludes by considering the handful of cases in which defendants in the study sample posted a bond in spite of lower cash bail. These cases were rare, confirming the assumption that defendants will choose the less costly option when given a choice. The small number of cases in which the defendant apparently did not make the most cost-effective choice pointed to a variety of problems: (1) the possibility that defendants are sometimes not aware of cash alternatives or of the advantages of posting cash; (2) the potential for clerical error on bail affidavits; (3) the potential for fraudulent bail affidavits. With careful oversight, defense counsel and the courts could do much to address all three areas of concern.

¹⁰ A rough estimate can be worked out mathematically, assuming any discount greater than 50% to be effective by the definition used in this report. In 2009, 37% of bail cases had a cash discount and 11% of those had a discount greater than 50%, so the percent of effective discounts among all bail cases was roughly 4% (.37[.11]=.041). For 2005, the comparable figure would be 7% (.23[.30]=.069).

Policy Implications

Any reduction in the use of commercial bail bonds in New York City would be in the interest of defendants and the criminal justice system, for the reasons outlined in the Introduction to this report, and would bring the City into closer compliance with the standards of the American Bar Association (ABA 2007) and the National Association of Pretrial Services Agencies (NAPSA 2004). Both of these associations recommend the abolition of compensated sureties.¹¹

The larger issue of the bail system as a whole is not addressed in this report, but many of the implications of this research could be taken as a critique of money bail in all its forms. For a good discussion of those issues, especially as they pertain to defendants charged with low level crimes and held on small amounts of bail, see Fellner (2010).

Assuming that the courts will continue to set bail, at least for the foreseeable future, the policy recommendations suggested here have a narrower focus: enabling more defendants to post cash rather than a bond to gain their release. Recommendations for other strategies, which would lessen the use of bail altogether, have been suggested elsewhere. They include the creation of supervised release programs for pretrial detainees and the use of non-monetary (unsecured) bonds (Fellner 2010; Phillips 2008a, 2008b; Phillips 2007a, 2007b).

We suggest six specific recommendations that follow directly from this research. The first would require legislative action, but the other five would require nothing more than changes in practice on the part of the courts.

- ***CPL 520.10.1 should be amended to omit insurance company bail bonds from the authorized forms of bail.*** If New York were to join the other four states that currently have no commercial bail bonds, then all release and detention decisions could be based on empirically assessed risk rather than commercial profit, defendants would no longer pay non-refundable fees in order to gain release, and the problems with fraud and error that have been identified in this report would be avoided. Such a change, however, would need to be accompanied by adjustments in bail setting practices as described in the next four recommendations. Without such changes, thousands of defendants annually would be held in detention who could have posted a bond. With these changes, the same defendants could post cash bail instead.

The four recommendations that follow are applicable whether or not insurance company bail bonds remain a legally authorized form of bail. With commercial bonds, the recommended changes would enable more defendants to post cash instead of a bond; in the absence of commercial bonds, the recommended changes would fill the gap left by the removal of the commercial bond option by making cash bail equally as feasible.

- ***The use of cash alternatives should be expanded.*** By setting cash alternatives, the courts can enable defendants to post cash bail instead of giving the same amount of money to a bondsman. However, the current practice of setting cash alternatives at 50% of the bond amount is often insufficient to achieve this objective.

¹¹ Until recently, the National District Attorneys Association also called for the abolition of commercial bonds (NDAA 1991) but in the new (third) edition of the NDAA *Standards* that recommendation has been withdrawn (NDAA 2010).

- ***When bail is set, a cash discount should be set at 60% for most cases, and at 70% in Brooklyn and Queens for bonds of \$10,000 or more.*** The research established these as “effective cash discount” levels, meaning that most of the time these discounts will be sufficient to compete with a bond. Effective cash discounts do not lessen the amount of money needed for release, compared to the outlay needed to post a bond, but make it possible for the defendant to post bail in cash instead. This formula is based on the legally regulated fee structure for bonds and the (unregulated) amount of cash collateral actually collected by bondsmen for cases in the research sample.
- ***The use of secured bail bonds should be expanded.*** The courts have the option of allowing defendants to put up real estate or other property as collateral, but rarely use it. The research showed that some 20% of Queens bonds were secured by property, so secured bail bonds deposited directly with the court would be especially appropriate in Queens. Even a 70% cash discount might not enable some defendants to post bail, but home ownership might make it possible to post a secured bail bond with the court.
- ***The use of partially secured bail bonds should also be considered.*** The financial incentive for seeking a bail bondsman would be eliminated for virtually all cases if the defendant needed to raise only 10% of the bail amount in order to post cash. The ABA Standards advocate the use of 10% deposit bail (but only if no other conditions, including an unsecured bond, will ensure appearance), and New York’s Criminal Procedure Law provides this option under the term “partially secured bail bond.” The defendant would be liable for the full amount of the bond if he or she failed to appear (unlike a cash alternative, in which only the cash bail deposited with the court would be forfeited).

The final recommendation addresses improving oversight of bondsmen rather than reducing their role in pretrial release.

- ***Bail affidavits should be monitored more closely.*** A closer scrutiny of bail affidavits by the courts could eliminate occasional illegal fees and exorbitant cash collateral. Bond fees and collateral that equal or exceed the cash alternative set by the court should raise a red flag: the defendant and his family could be unaware of the cash alternative or of the advantages of posting cash; there could be errors on the bail affidavit; or the affidavit could even be false. If the courts are interested in the supervision of defendants released on bail bonds, they could also consider requiring more systematic descriptions of weekly reporting requirements and other types of supervision, if any, that bond agents will use to ensure that the defendant returns for all scheduled court appearances.

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