

BOOK REVIEW

DETENTION BEFORE TRIAL. BY MARTIN L. FRIEDLAND. Toronto: University of Toronto Press, 1965. Pp. xv, 202. \$9.25.

Anne Rankin †

The injustice of needless pretrial detention has been the focus of much attention in the last few years. Recently the Institute on the Operation of Pretrial Release Projects and the 1963 National Conference on Bail and Criminal Justice have provided forums for the discussion of the effects of and alternatives to detention. Under the impetus of such forums and the pressure of jurisdictions seeking solutions to their pretrial problems, the body of literature on the early stages of the criminal legal process has grown rapidly. *Detention Before Trial* by Martin L. Friedland is an excellent addition to this literature. By tracing the court appearances of all 6,000 persons who were accused of offenses under Canada's federal criminal code and tried in the Toronto magistrates' courts over a six month period from the beginning of September, 1961 to the end of February, 1962, the study statistically documents the extent and nature of custody before trial in the Toronto magistrates' courts. These results are analyzed and presented in a careful and workmanlike manner.

Professor Friedland clearly points out that the problems of pretrial detention with which many jurisdictions in the United States are wrestling are not unique to the American legal system. Although Toronto's criminal procedures differ from American procedures in some mechanical aspects, the unsavory details of detention are identical. In its essence the Toronto Study mirrors published findings of American pretrial practices.

Professor Friedland's analysis of the relationship between custody before trial and case outcome, however, differs slightly from similar American work.¹ It is limited to a study of accused persons who have pleaded not guilty—a refinement that is possible only with a large number of cases. By isolating the defendants who pleaded not guilty, Professor Friedland could examine the relationship between custody before trial and conviction. Such a connection had been implied but not fully developed in earlier bail reports. Every table in Chapter 6 shows that accused persons in custody are more likely to be convicted than acquitted and are more likely to be sentenced to prison than released. In a footnote the author warns that statistical tests of significance show that the differences are not

† Russell Sage Research Fellow in Law and Sociology, Columbia University.

¹ For a summary of the findings of the American studies see FREED & WALD, *BAIL IN THE UNITED STATES* 45-48 (1964).

important. Thus the difference between the number of free persons who are convicted or sentenced and the number of detained persons who are convicted or sentenced is no greater than by chance alone. However, the consistency of the difference supports the existence of a relationship, because one would not expect an accidental difference to happen again and again. The consistency of the difference gives credence to a relationship between custody and case disposition, but the lack of statistical significance suggests the relationship is not strong. We are left without a satisfactory answer to the crucial question of the effect of pretrial custody upon trial outcome.

Of special interest to American readers who are beginning to use the summons as an alternative to pretrial custody is the discussion of the use by the police of the summons instead of arrest. The Toronto Study shows that ninety-two percent of the 6,000 accused persons were arrested rather than summoned, even though law in Canada clearly directs a justice not to issue a warrant of arrest when a summons would be sufficient. The summons compares favorably with arrest and bail as a means of securing the appearance of the accused in court—98.7 percent of the 460 persons who were initially given summons were present for their first court appearance. In addition their appearance rate is the same as that for those arrested and then released on bail from the police station. The value of Chapter 1 lies not only in its evidence that summons is a satisfactory method of requiring court appearance, but also in its formulation of the practical and legal factors which affect the use of summons. Professor Friedland suggests changes in existing procedures and statutes which would meet problems such as correct identification of the accused, consequences of failure to obey a summons, continuation of "illegal" conduct, and the convenience of the arrest process for the police.

In other chapters the author describes the mechanics of the Toronto system. He analyzes the extent to which police custody pending the first court appearance is used and describes what happens to the accused person at the first court appearance, particularly when he is brought into court in custody. The procedures for setting and raising bail in Toronto, the ways in which bondsmen operate, and the consequences to the defendant of absconding are also described in detail.

Finally the author concludes that "a complete re-thinking of . . . [the Toronto] release procedures is clearly required." (P. 172.) He argues not that all persons should be released pending trial but rather that definite, clear and unequivocal criteria should be used in denying bail. In fact, legislation should set out these criteria for determining which accused persons should be deprived of release pending trial. The author advances possible criteria: previous conviction for skipping bail, previous conviction for an indictable offense committed while awaiting trial for an indictable offense; a subsequent charge of an indictable offense alleged to have been committed while the accused was already on bail awaiting trial for an

indictable offense, a serious risk of intimidation of witnesses, or a serious risk that the accused will abscond. (P. 188.) To guard against the possibility that the police will bring an unfounded charge in order to have the accused placed in custody, the police should be required to introduce at least prima facie evidence of guilt at the bail hearing. Accordingly the onus of establishing by proper evidence the necessity for denial of bail should be on the Crown, and the court denying bail should be required to give its reasons for so doing. (P. 188.)

Detention Before Trial is a plea for reform of the Toronto criminal procedure which releases only thirty-eight percent of all persons for whom bail is set at first appearance. But it goes beyond being just one more good case study. It is a creative discussion of solutions to present pretrial problems and is a well documented and provocative study that anyone concerned with the pretrial phase of the administration of criminal justice will want to read.