

ARTICLES

OBSTACLES TO SEEMINGLY SIMPLE REFORM: A CASE STUDY OF BAIL REFORM

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Since the 1960s, one of the major reform movements in the criminal justice system has been in the area of bail and pretrial release. Sparked initially by a concern with the economic inequities inherent in a cash bail system (Thomas, 1976) and buoyed by the work of the Vera Foundation with the Manhattan Bail Project, Congress passed the Bail Reform Act of 1966. This Act favored the use of Release on Recognizance (ROR) and authorized the use of conditional release for those ineligible for ROR. Money bonds were recommended only in cases where the defendant's appearance could not be assured (Lay & Hunt, 1985). Subsequently, a number of states and local jurisdictions have modified bail procedures. In recent years much of the impetus for policy change has been due to jail overcrowding.

This reform movement has generated a great deal of research. For the most part, however, this research has focused on outcomes such as the effect of bail reform on failure to appear rates and pretrial crime (e.g., Goldkamp & Gottfredson, 1985; Suval & Zingraff, 1986; Thomas, 1976). There has been less attention to the **process** of implementing bail reform (for an exception, see Flemming, 1982). This is particularly true for non-metropolitan jurisdictions. It also reflects the lack of attention to the implementation process for many types of criminal justice reforms (Austin & Krisberg, 1982; Harland & Harris, 1987).

This paper represents a modest attempt to fill this void. The paper reports on a case study of the implementation of bail reform in a small midwestern county. Thus, the study is a process evaluation of reform implementation. The policy reform is a relatively straightforward, clear-cut innovation that, on its face, would seem to be ripe for meaningful implementation. The fact that the data indicate slippage at the implementation stage makes the need for process evaluation even stronger and perhaps more interesting. Finally, the study provides a picture of the implementation of bail reform in a relatively small, non-metropolitan, county. Thus, it provides an opportunity to view implementation processes in a context often ignored in criminal justice studies.

IMPLEMENTATION OF REFORM

A key factor in the call for increased attention to the process of implementation has been the consistent findings of the lack of implementation effects or outcomes. This has been true of implementation research generally (Pressman & Wildavsky, 1973) as well as for criminal justice implementation in particular (Feeley, 1983; Heumann & Loftin, 1979; Morash, 1982). An important starting point in understanding the implementation process is to analyze the implementation milieu (Harland & Harris,

1987). The notion of the implementation milieu points to "the idea that successful innovation may depend more on the characteristics of the adopting organization than on those of the innovation itself" (Harland & Harris, 1987, pp. 183-184). Thus, understanding whether or not a policy will be implemented involves more than just an objective appraisal of the merits of the policy but must include analysis of the organizational and interorganizational context in which the innovation is to occur (Love & Sederberg, 1987; Palumbo, 1987).

Morash (1982), drawing on Van Horn and Van Meter's (1977) model of policy implementation, reviewed a number of studies of criminal justice implementation that begin to provide insight into the implementation milieu or context of criminal justice innovation. From this review, several common dimensions related to successful implementation emerged.

One relatively consistent finding in studies of criminal justice policy implementation has been the importance of the congruence between the policy and the self-interests of those charged with implementing the policy (Blakely & Davidson, 1982; Handler & Zatz, 1982; Levine et al., 1980; Morash, 1982). Musheno et al. (1989; forthcoming) found that a key factor enhancing the commitment of implementors to the new policy was the level of involvement of the street-level implementors in decision making. Comparing the implementation of community corrections in three states, Musheno et al. found greater implementation in those states where the line level workers participated in decision making. This study, consistent with earlier studies emphasizing self-interest, suggests that self-interest could be capitalized on through increased involvement of those responsible for implementation (Toch & Grant, 1982).

A second set of variables found to affect implementation relate to the clarity and consistency of the policy. Unclear and contradictory policy statements have been shown to act as obstacles to implementation of juvenile justice diversion (Klein, 1979), gun control legislation (Zalman, 1982), and determinate sentencing (Casper & Brereton, 1984). Ambiguous and contradictory goals are seen as particularly problematic in the criminal justice area because of the fragmented structure of the criminal justice system. Thus, a policy such as the expanded use of alternatives to incarceration, when enacted without a clear and non-contradictory goal statement, is subject to varying interpretations within the agencies responsible for implementation (e.g., police, probation, court).

Additional variables of interest relate to communication and resources. Steinitz (1982) found that the failure to implement a judicial decree governing female prisoners in the District of Columbia was the product of lack of communication between the U.S. Parole Commission and the District of Columbia Department of Corrections. Resources are an obvious key to implementation (Van Horn and Van Meter, 1977). Several researchers have found that resources have the greatest impact on innovation when coupled with favorable attitudes on the part of the implementors (Handler & Zatz, 1982; Lerman, 1984). For example, federal funds for juvenile deinstitutionalization were found to have the greatest impact where local officials were already in favor of deinstitutionalization (Handler & Zatz, 1982).

Thus, students of policy implementation point to the need to study the context within which innovation occurs (Berman, 1978; Harland & Harris, 1987). Key factors within this context are the self-interests of those in-

volved in implementation, the clarity of the policy, effective communication, and resources. The ROR reform that is the subject of the present analysis is interesting because it seemed to embody a number of characteristics related to successful innovation. That is, the ROR policy enjoyed the commitment of top-level administrators, it was a clear, unambiguous policy directive, and it did not involve the expenditure of resources. If anything the policy would save fiscal resources. Thus, it appeared to be a policy that would be successfully implemented. The fact that the policy was not successfully implemented suggests that the need to carefully analyze the "implementation milieu" for clues explaining this implementation failure.

THE POLICY CHANGE

This study involves the analysis of the new ROR policy for misdemeanor cases in a small, midwestern county (population approximately 100,000). As in many jurisdictions, the judges in this county have a bail schedule that instructs jail personnel on the eligibility of arrested defendants for ROR and bail (and the amount of bail for various offenses). In June 1987, the six county judges passed a revised bail schedule. The key provision of the new schedule related to eligibility for ROR handling for misdemeanor cases. The old bail schedule had stated that in misdemeanor cases involving county residents or individuals employed in the county, jail personnel *may* release the defendant on his or her own recognizance. Thus, granting ROR to eligible defendants was a discretionary choice for jail booking officers. The new policy stated that jail personnel *shall* release eligible defendants on ROR. Thus, the new policy was non-discretionary. Interviews with the judge responsible for misdemeanor cases indicated that the policy was intended to be non-discretionary. If misdemeanor defendants were either county residents or were employed in the county, they were to be released on their own recognizance (the policy excluded those with a prior felony conviction within the past five years and those presently on parole or probation).

The policy was created by the judge responsible for misdemeanor cases and had the support of all the county judges. Thus, as noted above, the policy was straightforward, unambiguous statement supported by the top-level administrators responsible for pretrial release policy. Further, the policy did not require the outlay of any fiscal resources. Indeed one of the goals of the policy was to conserve jail resources by avoiding the unnecessary detention of low-risk misdemeanants.

In subsequent sections we consider the available evidence on the extent to which the new policy was implemented. In doing so, we examine the milieu or context in which the innovation occurred, some of the reasons for policy slippage, and the implications of this case study for our understanding of policy innovation.

METHODOLOGY

The study relied on two sources of data -- court and jail records and interviews with key participants in the justice system. The court data cover all misdemeanor arrests occurring between June 1, 1987, the date the new

ROR policy went into effect, and December 31, 1987. During that period 915 misdemeanor arrests occurred.

The study did not involve comparison with a pre-intervention period or with control sites as might be preferred in most policy implementation analysis.¹ We feel this was justified in the present study, however, because of the clarity of the policy directives and because of the intent of the evaluation. Because of the non-discretionary nature of the policy, anything less than 100% of the eligible defendants being released on recognizance represents slippage between policy intent and policy implementation. Thus, the simple proportion of eligible defendants on ROR is a useful indicator of policy implementation.

Additional data were obtained through interviews with key participants. These were informal, unstructured interviews with judges, the court administrator, the sheriff, and jail booking personnel. In addition, we attended several meetings on pretrial release policy involving judges, court administrators, the sheriff, bail bondsmen, and local citizen advocates.

THE CONTEXT

The impetus for the revised ROR policy came primarily from concern with overcrowding at the new county jail. The jail had opened in the winter of 1986 and had a capacity for 127. The old jail, considered by all decrepit and outdated, was chronically overcrowded with a capacity around 60. The expanded jail was supposed to eliminate the overcrowding problem. However, as has been true elsewhere, the expanded capacity was soon filled and the new jail has been operating at or above capacity since its opening.

The overcrowding of the new jail was of concern to county officials who were forced to hire additional staff for the jail and to a local citizens advocacy group concerned about the restrictions on programming and visitation due to overcrowding. In November 1986 a new county prosecutor was elected. The prosecutor advocated consideration of a public ten percent cash bail system as a means of promoting equity and reducing pretrial detention.

In response to these concerns the judges convened a public meeting in January 1987. The meeting included the judges, the sheriff and police officials, the court administrator, the prosecutor, local private bail bondsmen and their attorneys, and representatives of the citizens group. The purpose of the meeting was to consider the prosecutor's cash bail proposal, the overcrowding issue, and the present bail schedule. The judges made it clear that they were unwilling to consider an expansive cash bail system because of their concern with tracking down defendants who failed to appear and/or fled the jurisdiction. They were, however, willing to consider the role that bail for misdemeanants may be playing in the overcrowding problem. The judges, along with the court administrator, did not believe that many misdemeanants were being detained or that many were posting bail. Rather, the impression was that nearly all misdemeanants were being released on ROR. However, as is true in many small counties, the data needed to address the issue were unavailable. The judges then requested that faculty from the criminal justice department of the local university study the issue.

In response to this request a very limited analysis of bookings into the jail during a two week period was conducted. One of the surprising findings was that only about one-third of the misdemeanor defendants were released on ROR. The majority of misdemeanor defendants were posting bond to secure pretrial release. This finding had to be qualified because there was no way to separate eligible defendants from ineligible defendants. However, because most defendants were known to be county residents and/or employed in the county, the finding seemed to fly in the face of the impressions of the judges and court administrators who had predicted that nearly all misdemeanants would be released on recognizance.

In part as a response to these findings, the judges passed the revised bail schedule, effective June 1, 1987. This schedule eliminated the discretion of the booking officers. All misdemeanants meeting eligibility requirements were to be released on recognizance. In conjunction with the new policy, the judge responsible for misdemeanor cases requested that the criminal justice department conduct a further analysis of compliance with the new policy. The analysis of misdemeanor cases from June 1, 1987 to December 31, 1987, is the product of this request.

FINDINGS

As previously noted, 915 misdemeanor arrests occurred during the seven month period following the adoption of the new ROR policy. Of these, 300 (33%) received ROR. Interestingly, this is the same proportion of cases receiving ROR as was found in the preliminary study conducted prior to the new bail policy. This, of course, raises serious questions about the extent to which the new policy altered release decisions. The earlier study, however, did not allow determination of whether cases denied ROR were eligible for such release. Thus, the question of prime interest in the present study was whether the pool of cases posting bond included cases eligible for ROR.

As a first step, 251 cases involving writs or warrants and cases on probation at the time of arrest were eliminating cases involving individuals who were not either county residents or employed in the county. The additional exclusionary criteria related to prior felony convictions during the previous five years. Data on convictions were difficult to obtain. We were, however, able to screen out all cases arrested for a felony charge

Table One
Pretrial Detention Status of Misdemeanor Cases

Cases Ineligible for ROR:	
Detained (Writs, Warrants, Probationer)	251
Posted bond (Non-county, Priors*)	225
Total	476
Cases Eligible for ROR:	
ROR	300 (68%)
Posted Bond	139 (32%)
Total	439 (100%)
	N = 915

*Includes cases ineligible because non-county resident or not employed in county and cases ineligible due to prior felony arrest.

during the last five years. Of course, some of these cases would not result in a felony conviction so some eligible cases were excluded from the analysis. Of the 364 cases that posted bond, 139 (38%) were indeed eligible for ROR. This meant that 32% (see Table one) of the cases eligible for ROR did not receive ROR as mandated in the new policy.

Obstacles to Implementation

The finding that nearly one-third of the misdemeanants eligible for ROR were being forced to post private bail bond may not be that surprising given understanding of traditional bail practices and the plethora of findings indicating resistance to policy innovation. Recall, however, the features of this policy that suggested high likelihood of conformance (see Mazmanian & Sabatier, 1983). The policy was clear and unambiguous stating that misdemeanants meeting a small set of eligibility criteria shall be released on recognizance. The policy had the support of key top-level administrators. There were no meaningful fiscal resource constraints. Further, although the implementation of the policy did require interagency involvement (court and sheriff department), because of the small size of the jurisdiction these relationships were not as complex and fragmented as one would encounter in a larger, urban center. Indeed, the only actors involved were the judges, the court administrator, the sheriff, and several booking officers, all of whom physically resided in the same building. Thus, in many respects this was a policy innovation seemingly open for successful implementation. Yet, even in this setting there was considerable slippage between policy intent and implementation. This, of course, raises the question why? Interviews with key participants suggested that the implementation problems arose due to four interrelated problems -- communication breakdown; the disposition of implementing authorities; failure to involve street-level implementors in decision making; and the lack of oversight of jail operations.

Communication Breakdown

Following adoption of the new bail schedule and ROR guidelines, the policy was sent to the court administrator. The court administrator forwarded the policy to the Sheriff's Department in the form of a memo. The memo was then posted on the bulletin board of the booking office. Interviews with the court administrator and a ranking officer assigned to the booking desk indicated that they could not recall any significant policy change occurring. Jail staff indicated that a memo was posted but that they were unaware of the mandatory nature of the ROR policy for eligible misdemeanants. As a sergeant from the Sheriff's office explained, "we received a judge's bulletin, but it seemed like it was no big deal." As far as the Sergeant could recall, "nothing had changed" in terms of bail procedures during the two years she had been there. Another official added that "the new policy really didn't change anything." Obviously, the failure to effectively communicate the change in policy would be expected to lead to implementation problems (see Van Meter and Van Horn, 1977).

Disposition of Implementing Authorities

As Van Meter and Van Horn (1977) noted, the disposition of the implementing authorities also can influence policy implementation. As previously indicated, the top-level authorities were supportive of the new policy. However, a crucial distinction must be drawn between top-level policymakers (judges) and the street-level actors (booking officers) actually responsible for implementation (Musheno et al., 1989; forthcoming). Interviews with jail staff indicated that misdemeanant defendants displaying a boisterous or arrogant attitude were sometimes denied ROR and detained until they posted bail. When asked why an eligible defendant would be required to post bail, one officer explained that "if a suspect's demeanor is a pain in the butt, I will post a bond and tell him that he will stay here until his attitude changes." This seemed to be an example of where the non-discretionary nature of the policy conflicted with the interests (for deference; respect for authority, etc.) of the street-level implementors leading to slippage between policy intent and implementation.²

Non-Involvement of Street-Level Implementors

The street-level actors, the booking officers, were never consulted in the formulation of the ROR policy. There were no meetings between court and jail staff and, as noted above, the policy was communicated in the form of a bulletin. They thus never had an opportunity to express concerns over the handling of troublesome cases or to understand the intent or the rationale of the policy. When asked about the judges' intent in formulating the policy, one officer responded in a rather disgusted tone that "you'd have to ask the judges that." The failure to include these officers could be expected to work against their sense of ownership of the ROR program and their commitment to the policy (Harland & Harris, 1987; Musheno et al., 1989; forthcoming; Toch & Grant, 1982). Indeed, this seems to have been the case.

Lack of Oversight of Jail Operations

Jails have traditionally been considered one of the hidden areas of the criminal justice system. Although recent years have witnessed an expansion of administrative and judicial regulation of jails (Thompson & Mays, 1988; Advisory Commission on Intergovernmental Relations, 1984), effective administrative oversight of the day-to-day operations of jails remains elusive. Indeed, one of the most significant problems in dealing with jail overcrowding is the lack of basic information regarding the characteristics of the inmate population (Galvin et al., 1977; Hall, 1987). Without such basic information sources and effective oversight, there is little direct accountability for the carrying out of routine operations.

The lack of performance monitoring is not exclusive to jail operations but rather seems to be common in the human services sector. The lack of oversight leads to what some have termed the "decoupling process" where there is a separation of the administrative and technical-level activities (Meyer & Rowan, 1977). Such a decoupling process appears to have occurred in the present case. At the administrative level, the judges formulated

policy. As noted above, the policy was developed without any involvement of the street-level implementors, without any consideration of the potential conflict with the interests of the implementors, and with little attention to communication of the policy or its rationale. In addition, there was no effective mechanism in place for determining whether the policy was implemented. Indeed, in requesting the study of bail decision-making, one of the judges commented that "we really have no idea what goes on over there. Unless we see it on an individual case basis, we don't know who's in there or whether they belong there." Without the means for oversight there was little opportunity to "tighten" the connection between administrative policy and technical performance.

CONCLUSION

In light of the consistent findings of the problems of policy implementation, perhaps the level of compliance observed in this county should be considered "normal" or "the best to be expected." We, think, however, that the failure to fully implement this policy is instructive. These are misdemeanor cases involving county residents or employees with no prior record. Further, as noted throughout the paper, the policy was clear, supported by top-level authorities, and required no outlay of resources. Thus, if ever we might expect near full compliance this might have been the case.³

However, as noted, nearly one-third of the cases eligible for ROR were forced to post bond. The reason for the policy slippage seemed to relate to the failure to communicate the law to those responsible for implementing the policy, the failure to involve the booking officers in decision making, and the conflict between the non-discretionary nature of the policy and the self-interests of the booking officers when confronted with certain types of cases. The policy slippage was then compounded by the lack of monitoring. These factors are interrelated and point to the problems associated with top-down implementation strategies (Palumbo, 1987). That is, the factors that seemed to cause the policy slippage seem to be the product of the failure to involve street-level implementors at the policy development stage.

This top-down approach is illustrative of what Elmore (1979-80) has termed the forward mapping approach to implementation. The forward mapping approach is based on the assumption that top-level policymakers control the "organizational, political, and technological processes that affect implementation" (Elmore, 1979-80, p. 603). As Elmore (1979-80, p. 603) noted "The notion that policymakers exercise... some kind of direct and determinant control over policy implementation might be called the 'noble lie' of conventional public administration and policy analysis." This assumption, that once policymakers enunciate policy implementation will follow, seems to have been operating among the judges and court administrators in the present case and points to the explanation of the policy failure. The forward mapping approach ignores the interests, commitment, and insight of crucial actors in the implementation process, the street-level implementors. Further, it is upon these street-level actors that successful implementation ultimately depends.

Although one must be cautious in drawing conclusions from a limited case study such as this, the study does suggest that the factors identified

as relating to policy implementation may work as necessary but not sufficient causes (see also, Love & Sederberg, 1987, p. 171). Thus, the basic premise guiding the analysis appears errant. The presence of a number of facilitating factors (top-level commitment, clear policy statement, lack of resource constraints, and relatively non-fragmented decision context), while perhaps necessary for implementation, were not sufficient. The missing ingredients relate to the involvement of those actually responsible for implementation. For it is with such involvement that policies can take into account conflicting interests, gain the commitment of street-level implementors, and be effectively communicated.

NOTES

¹While the present study does not involve a rigorous pre- and post-intervention design, a preliminary study conducted prior to the new policy does allow for some comparison. As discussed subsequently, the fact that the proportion of misdemeanants released on recognizance (one-third) is identical to that found in the preliminary two-week study period, suggests that the new policy did not have a profound impact on case processing.

²This also reflects the discretion involved in the handling of less serious offenses (Gottfredson & Gottfredson, 1980).

³See Mazmanian and Sabatier (1983) for an example of a similar list of key factors associated with implementation.

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