Experiments in the Criminal Justice System

by Herbert Sturz

The primary focus of the Vera Institute of Justice has been on the relationship of poverty to the administration of criminal justice—not just because our criminal process has worked hardships on the poor, but because the poor are. to an overwhelming degree, the clients of the system, both as victims in criminal cases and as defendants. Well over 50 per cent of those persons appearing in the criminal courts of America are indigent. More are dangerously close to that level.[1]

Added lo the impact of poverty on the criminal justice system is the impact of volume. .Accelerating urbanization has created enormous administrative problems. Last year, in New York City, the police made over 200,000 arrests. Millions of dollars and millions of man-hours are spent on the logistics alone. Police spend as much, or even more, time guarding, transporting and processing defendants and waiting in court to testify than on performing their primary functions: keeping the peace, preventing crime, and apprehending violators. The same situation exists for prosecuting attorneys, defense lawyers, and judges, all of whom spend a large part of their time in calendar management and other matters ancillary to the judicial proceeding.

Thus the quality of justice is diluted: Instead of getting their day in court, the less serious cases get a couple of crowded minutes: those charged with serious crimes wait months for a trial—often behind bars. Lack of time to examine the merits of a case dehumanizes the process, with the result that defendant and the public develop hostile altitudes towards the police, the courts, and the city. The criminal process loses its dignity, and with it a part of its effectiveness.

Against this background, the Vera Foundation was incorporated in 1961 to examine the criminal justice system and to develop methods for improving it. For several years, Vera was financed by its founder, Louis Schweitzer, and by grants from the Ford Foundation and the Office of Juvenile Delinquency and Youth Crime of the Department of Health, Education and Welfare. In June, 1966, the Foundation became the Vera Institute of Justice with a generous five-year grant from the Ford Foundation. Mr. Schweitzer became president, and Burke Marshall chairman of the Board of Trustees. Insofar as Vera has any overall *modus operandi,* it is to spot individual problems in the way our system of criminal justice operates and to work with the relevant agencies to bring about change.

As its first project, Vera undertook, in 1961. the study oi the administration of bail.[2]

In New York City, each year almost 60,000 criminal defendants were held in jail *prior* to *trial, often* for *minor crimes,* because they could not pay for bail bond. For years legal scholars had been deploring a bail system in which a poor man not yet found guilty could be kept in jail for weeks or months, his family put on relief. and his joh lost while more affluent defendants remained free until trial. New York City administrators had

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long been exasperated by detention costs —upwards of $10,000,000 a year—just to house these defendants.

Vera set out to determine whether hardships to the defendant and cost to society were necessary. Law students interviewed defendants and investigated their background, family, jobs, residence, and prior records. When the accused appeared to have sufficient roots in the community, the students recommended to judges that he be released without bail.

The project received cooperation from the courts, the district attorney's office, the Legal Aid Society, and the Department of Corrections. The hypothesis that poor people selected for their community ties could safely be released on their own word was put to a test and proved correct. Within the three years that Vera ran the experiment, 3,505 persons were released, and only 56 failed to return to court.

In September, 1964, the New York City Probation Department took over the program and extended it to the criminal courts in all five boroughs of the city. Since then, over 25,000 defendants have been so released, and the numbers are climbing each year. The Manhattan Bail Project has spurred the creation of similar programs in more than 100 jurisdictions throughout the country, and many of its features have been incorporated into the federal Bail Reform Act of 1966.[3]

The success of the bail experiment led us to conclude that more could be done to ease the burdens on the defendant and the system at an earlier stage in the process, that is, at the time of arrest itself. This would save the defendant and the city the overnight stay in jail and perhaps the man's job as well. If he could be released by the police after booking or even on the street through use of a summons returnable at a specified time, courts could schedule their dockets more rationally.

We found that the police already had statutory power to substitute a summons for an arrest in misdemeanor cases but were using it primarily for traffic or ordinance violations. Beginning in the spring of 1964, we worked out with the New York City Police Department and the courts an experimental program in three Manhattan precincts for extending the use of police summonses into cases of simple assault, petit larceny, and disorderly conduct. Vera provided the fact-finding investigators to interview defendants at the station house. The same kind of criteria used to free defendants on their own recognizance in court was used to allow release from the precinct within an hour or so after arrest.

The Manhattan Summons Project has worked well: 1,396 persons have been released; only 3.5 per cent have failed to appear in court at arraignment. In December, 1966, the police extended the program to all twenty-three precincts in Manhattan and are now doing their own interviewing and verifying; the list of crimes for which station-house release on a summons is permissible has been expanded to all but the most serious misdemeanors. In fact, in May, 1966, Commissioner Leary, addressing the Judicial Conference of the District of Columbia Circuit, raised the possibility of issuing police summonses in selected felony cases.

More recently we have turned our attention to a bail reevaluation project: Defendants not released at arraignment because of lack of roots in the community might be released under the supervision of a third party. Because persons behind bars have scant opportunity to find a sponsor, the project is bringing neighborhood sponsors, such as anti-poverty organizations, unions, and churches, into the courtroom and is arranging for release supervision. The project thus

not only helps the accused but involves positively many persons and community organizations in the criminal process for the first time. The network of community organizations might prove useful at a number of other stages in the criminal process. For example, the agencies might find jobs for convicted offenders who otherwise would be given jail terms or released back into society with no provision for supervision or surveillance.

We are also participating in plans to ease the volume pressures on New York's Criminal Court. At the request of Mayor Lindsay, Justice Botein, and Police Commissioner Leary, we have helped develop a twenty-four hour arraignment court in Manhattan. Under the new system, operative January 11, 1967, arrested persons, except for those released on summonses at the station house, will be taken to a central arraignment facility where bail interviewers and Legal Aid lawyers will be available around the clock. The bail determination will take place without delay, and, in appropriate instances, the case will be disposed of on the spot. Not only the defendant but all participants in the system stand to profit from full-time justice. The district attorney can pass on the sufficiency of legal complaints before they are filed in court; he has more time to negotiate dismissals or reductions with legal aid lawyers; the legal aid lawyers have more time for adequate pre-court interviews with their clients instead of the harried few minutes they now have in the detention pens each morning; pre-arraignment detention will be avoided altogether, thus easing the load of the Correction Department; while the court can give more time to each arraignment when they are spread over a twenty-four hour period.

Together with the Corrections and Police Departments, we have already instituted a special prearraignment detention procedure for non-English speaking prisoners, most of whom are Puerto Ricans. Because of the language difficulties in communicating or understanding what has happened to them following arrest—and probably for cultural reasons as well—a disturbing number of these prisoners were committing suicide; or later charging police mistreatment. Now, immediately after booking, they are turned over to the Corrections Department which supervises their care and employs Spanish-speaking personnel to ease the tensions surrounding their temporary incarceration. The suicides have ceased, and the allegations of mistreatment have subsided.

Our most recent project introduces a new dimension into our intervention efforts in the criminal process. This is the Manhattan Bowery Project. It is an attempt to demonstrate that the skid-row alcoholic, who presents such visible testimony to the inadequacies of our social institutions, can be handled outside the criminal process with better results for him and a giant reprieve for the police, courts, jails, and hospitals. Each year, in New York City, there are about 60,000 drunk arrests—about 1,500,000 such arrests nationally—with no tangible benefits; the same men are picked up time and time again. The worst cases are allowed to lie on the streets; they are too troublesome to arrest.

For several months now, at the request of Mayor Lindsay, we have been studying the Bowery derelict problem and working with several city and private agencies to substitute a non-criminal but activist way of dealing with these police and safety problems. We now have a plan worth testing on a sizeable scale: In fact we have already tried it out on the Bowery over a two-day period.

Briefly, street teams of two recovered alcoholics and a plainclothes police officer approach men who are lying on the streets or whose appearance suggests they

are in need of physical help. On a voluntary basis, the men are asked if they want a bed and medical help. Should this be the case, they are transported to an emergency sobering-up and detoxication infirmary where examinations would be conducted and clean beds, clothing, and drugs, if necessary, administered.

We estimate that the men would stay an average of three days; during the first year, there would be a fifty-bed capacity. When the men are sober again, a follow-up program would be arranged either in a private mission or public welfare facility, still on a voluntary basis. The Police, Correction, Health, and Welfare departments have all agreed to contribute men and material to the program. Only a process of trial and error over several months will reveal whether we have a viable solution to a desperate social problem, but our brief two-day experiment gave evidence that these men respond to a non-penal approach in an affirmative way. Even though the underlying alcohol problem is not cured, the diversion of skid-row arrests from the criminal process would justify the program, aside from considerations of human decency.

I would like to discount the widespread belief that public institutions are somehow inherently resistant to change —particularly to change proposed by a private outside organization. We have not found this to be the case in New York City. We received strong support from Mayor Wagner when we began the bail experiment. We have had equally strong support from Mayor John Lindsay for our more recent projects. The various agencies with which we have dealt have readily acknowledged the need for change, and they have been hospitable to new ideas. There are a number of reasons for this private-governmental cooperation:

First of all, the research, fact-finding, planning, and experimentation require the full-time efforts of a number of people. Municipal agencies tend to operate on a day-to-day crisis basis; they are chronically understaffed and understandably reluctant to divert personnel from routine but essential tasks for experimental purposes. Thus they have been receptive to a small outside group willing to work intensively on specific problems.

Secondly, many irritants in the system arise not from activities of any one agency but from the lack of coordination among a number of agencies, or from the refusal of one agency to take responsibility for resolving policy conflicts between agencies. The principal mechanism for dealing with a problem which cuts across agency lines, the interdepartmental committee, has been a notoriously unsuccessful one. Such committees are often composed of agency representatives too low in the line of command to make responsible commitments or concessions; they are frequently dominated by one or another agency; and defensive tactics, traditional competitiveness, and antagonisms play too prominent a role in their operations. Backed by the mayor, a neutral private agency, such as Vera, can successfully bring together several agencies in a joint innovative program or experiment. Perhaps because we are not an intrinsic part of the bureaucratic machinery, we represent no threat to existing agencies and bring with us no aura of past misunderstandings or wrongs. We can devote full time to bringing about the required degree of cooperation; this is our business and not an extra duty added onto an already overcrowded schedule. And to be frank, we can often contribute the extra funds or manpower to make an experiment succeed that a budget-bound city department cannot justify. It is ironic that in many instances experiments that might spell substantial long-range savings to a city are derailed because of a lack of short-range financing.

There is another factor involved, of perhaps primary importance. An outside group like Vera can take its case for change and coordination to the top; it can intercede with the city's power structure for the necessary authority and resources; it is not bound by chains of command. We are a private group with resources independent of the city government, but in a continuing relationship with public agencies, watchful for areas in need of reform from the citizens' as well as the agencies' point of view, and willing to work with the agencies in effecting these reforms. In this respect I think we differ from the traditional lobbying or crusading citizens pressure group or even from the periodic task force or investigating commission in several aspects. We do not seek reform by exposing inefficiency or injustice, by leveling indictments, or by public confrontation with line agencies. Too often, this approach achieves no lasting results; instead, it hardens opposition to change or at best leaves the kind and quality of change to the agency under attack. Rather, we start with the hypothesis that when the need for change is documented, agencies will or can be persuaded to experiment, especially if outside help is provided. We are aware that at the start we don't have the answers, and we try to stay away from formula recommendations. Instead, in cooperation with one or more agencies, we attempt to plan experimental pilot projects to test our alternative procedures.

A pilot-project approach has many advantages: Small test programs can usually be mounted inexpensively; few staff people are required, since specialists can be brought in *ad hoc;* time is saved because red tape is bypassed; relatively quick results can be expected. Since no new agency, bureau, or division is created, a project can be easily dismantled if it proves ineffective, without disastrous results politically or financially, and even in failure it may provide useful information. The pilot-project technique itself provides great flexibility, allowing the planner to change his approach on short notice. If the project proves worthwhile, the city can take it on as a permanent fixture, and the private planning group can move on to a new area.

The private action-oriented intervention approach we have tried with the police and courts might work as well in problem areas such as traffic control, air pollution, slum housing, etc. Perhaps a number of independent institutions, operating along lines similar to Vera, might be established to focus upon city problems, particularly those which cut across jurisdictional lines. Or perhaps a Pilot Project Corporation, devoted solely to innovation, might operate pilot programs across the whole range of urban problems.

FOOTNOTES

1. For the best analysis of the impact of poverty on the criminal process, I refer you to the 1963 Report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice, better known as the Allen Report.

2. For a detailed account of the workings of the bail project, see Sturz, "The Manhattan Bail Project," *The Legal Aid Brief Case,* October, 1962, pp. 21-27.

3. Vera and the Department of Justice acted as co-sponsors of the successful National Conference on Bail and Criminal Justice. Three publications resulted from the conference: *Bail in the United States: 1964* by Daniel J. Freed and Patricia M. Wald, *Proceedings and Interim Report of the National Conference on Bail and Criminal Justice,* and *Bail and Summons: 1965.* Individual copies of these books can be obtained from Vera Institute of Justice, 30 East 39 Street, New York City, N. Y. 10016.

Reprinted from the *Legal Aid Briefcase,* February, 1967