

VERA INSTITUTE OF JUSTICE

Paris Office

Report of Activities : January 1977 - March 1978

In 1976, the Vera Institute of Justice was invited by the Office of Criminal Affairs and the Research Coordination Service in the French Ministry of Justice to collaborate in developing research and pilot projects in criminal justice reform. With financial support from the Ministry, the German Marshall Fund of the United States, and the Ford Foundation, an office was opened in Paris on January 3, 1977, attached to the Research Coordination Service which provides office space and supporting services.

To help carry out its work, Vera has enlisted the cooperation of a private French agency, the Center for Research in Criminal Policy (C.R.P.C.). Grant funds have been subcontracted to the Center to enable it to provide staff for joint projects.

In the fourteen months since the office opened, Vera's activities in France have fallen into five principal categories :

- a pilot project in pretrial detention,
- research on temporary release from prison,
- research on failures to appear for trial,
- publications, and
- conferences and seminars.

A summary of these activities follows

Pretrial Detention

In the month following the opening of the office, Ministry officials and Vera staff decided to focus on the problem of pretrial detention, an area in which Vera has had extensive experience both in New York and London.

In principle, the use of pretrial detention is more restricted under French law than in the United States. It is not permitted, for example, for any offense carrying a maximum penalty of less than two years in prison. Moreover, there is a legal presumption that detention will be ordered in other cases only if release or a form of pretrial probation (known as contrôle judiciaire) fail to assure appearance or protect the public. In spite of these restrictions and presumptions, detention is still considered by many to be excessively applied. Nearly half the French prison population is in pretrial detention, roughly the same proportion as in the United States. Slightly less than half of these detainees are released at some point before trial. Three out of five releasees spend at least one month in jail, one in seven at least four months.

One hypothesis advanced to explain high detention rates is that prosecutors and examining magistrates do not have sufficient information -- including information on social ties -- at first appearance and so take the more cautious route of detention. If true, this situation may be improved by applying a technique for rapidly verifying and evaluating community ties first developed by Vera 17 years ago in the Manhattan Bail Project.

The first step in exploring the utility of this technique in the French context was to interview a sample of 87 pretrial detainees in two Paris prisons. The purpose was to learn whether

a substantial proportion had sufficiently strong social ties at the time of their arrest to warrant a release recommendation based on standard Vera criteria. The answer was a clear "yes". Half the detainees interviewed had never been in prison before, 56 percent lived with their families, and the same proportion had stable employment or studies at the time of their arrest. Over a third had lived at the same address for 2 1/2 years or more. Over 80 percent had never been convicted of an offense more serious than simple theft. Moreover, half claimed to have a telephone at their residence, which would facilitate verification during an actual experiment. Altogether, a majority of the interviewed defendants would have qualified for an affirmative release recommendation under the Vera point system if the information provided could have been verified.

Having determined, therefore, that a sizeable part of the current pretrial population might benefit from timely presentation of verified community ties information, the next step was to determine whether this kind of intervention was feasible under French law, whether it would be accepted by magistrates and prosecutors, and, if so, precisely what form it should take. These three questions were pursued in numerous discussions between February and June with judges, prosecutors, police, lawyers and Ministry officials.

Among the principal actors, judges -- especially examining magistrates charged with issuing detention orders -- generally supported the idea of experimentation in this area. Prosecutors were skeptical but limited their objections to technical points. The Paris Bar Association was, surprisingly, hostile; sensitive about lawyers' lack of access to defendants in the immediate post-arrest period, they feared that the interview format might, somehow, compromise the defense of their clients. Involvement of a private agency not under direct control of either an administrative or a judicial authority -- unknown in French criminal procedure -- also troubled lawyers, prosecutors and some judges.

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Jurisdictional complications posed a further stumbling block. For a period of up to 48 hours, suspects may be kept incommunicado by the police (who are under the administrative authority not of the Ministry of Justice but of Interior) while they complete their investigation and decide whether to forward the case to the prosecutor.

Even after defendants are brought to court, they remain isolated under police authority in special holding cells for up to 24 hours more, until formally charged by an examining magistrate. Because the police refused to permit outside access to detainees in their custody, and because detention decisions must be made at the first appearance before a magistrate, a community ties interview and verification in advance of the detention decision was not feasible.

A compromise on these fronts was finally worked out by Ministry staff in a meeting on July 27, 1977, with representatives of the judiciary, prosecutors, police and the Paris Bar. The agreement called for a three - month pilot project reviewing release prospects for pretrial detainees in one of Paris' three prisons immediately after their incarceration. It was felt that this would test the utility of this kind of assistance and would provide a sounder basis for a later decision about extending the project to a second phase in which verified community ties information would be provided before initial detention decisions are made. Another meeting was set for October to review the results and decide on the second stage.

The project began on July 5. All newly arrived detainees, except those charged with the most serious offenses and those detained by judges who did not wish to participate in the experiment, were interviewed by project staff. Information was collected on residence, family ties, work history, and health. (At the request of the Bar Association, no data were taken on prior criminal records). Verification was done by telephone or mail contact with family members, friends or employers of defendants whose community ties appeared to provide adequate assurance of reappearance for trial.

report was provided to the examining magistrate to whom the case was assigned. (Again at the request of the Bar, only affirmative reports were presented to magistrates). In addition, project staff offered to try to arrange emergency housing, employment interviews, placement in drug treatment programs, or contrôle judiciaire if magistrates required such services as a condition of release.

Forty-one out of 45 examining magistrates contacted agreed to participate in the experiment. A target of 400 to 500 interviews was set in order to have an adequate sample from which to draw statistically reliable conclusions. (A sample of defendants held in one of Paris' other prisons during the same period was to be studied as a control group). Because of a slowdown in judicial processing during the summer vacation period, it soon became apparent that four or five months of operations would be required to achieve the necessary sample size.

In twelve weeks, 254 defendants were interviewed, 30 of whom were immediately rejected on several predetermined criteria. Of the remaining 224 cases, 58 recommendations (26 percent) were forwarded to examining magistrates. Eighteen of those recommended for release (31 percent) were freed during the 12-week study period. In addition to these cases, examining magistrates asked the project to interview 12 other defendants not included in the prison sample and to arrange emergency services prior to their release -- evidence of the growing acceptance of the project among some judges. (A more complete evaluation of the pilot project, in French, is attached).

Although the experiment proceeded smoothly throughout the summer, with excellent cooperation from prison officials, magistrates and defense lawyers, on September 22 the Bar Association abruptly requested its termination without prior consultation with Vera or the other parties to the original agreement and without waiting

for the scheduled evaluation meeting. No specific complaints about the conduct of the project were made ; the protest was based solely on the Bar's revised opinion that the project's format was not legal under French law, though this point had been debated from the beginning and had apparently been resolved to everyone's satisfaction at the time the project was approved. It is not unlikely that the Bar's subsequent resistance was rooted at least in part in longstanding mistrust of Ministry initiatives for reform, which the Bar perceives at times as threats to the legal profession. The reaction may also have been motivated by concern that dissident factions in the Bar would use the leadership's initial approval of the project as a basis for political maneuvering during upcoming elections for the Bar's governing body.

While the Ministry did not accept the Bar's reasoning on the legality of the project, it agreed to suspend the project temporarily in order to avoid a confrontation and to seek a workable solution to the problems raised. Project operations were halted between October and February while negotiations were conducted. During this period, a new President of the Bar took office who was more favorable to the goals of the experiment. Finally on February 16, a new agreement was reached permitting the project to begin again under a revised format.

Two key changes were made. First, project interviewers will now be formally certified as "character investigators" (enquêteurs de personnalité) by the prosecutor's office, the tribunal and the Ministry, which will bring them under a measure of official control advocated, in particular, by the lawyers. Second, interviews will be held only with defendants designated by examining magistrates. For the most part, these will be defendants whom judges are reluctant to detain but unwilling to release without additional assurances of appearance and good conduct.

These two changes will provide both more freedom and more restrictions on the project. While selection of interviewers will be more cumbersome and subject to veto by administrative authorities, once approved they will have, by virtue of their "official" status, easier access to information and more leeway in making recommendations than was the case before. In addition, although the new format leaves the choice of defendants to be interviewed in the hands of judges (and thus deprives it of some of its "experimental" character), it permits earlier contact with detainees and a more direct and collaborative relationship with judges.

Interviews will be conducted at the Tribunal, rather than the prison, immediately following the defendant's appearance before a magistrate when the magistrate feels that community ties information and/or supplementary social services will facilitate early release. For the great majority of these cases, detention of up to five days can be expected, even when strong community ties are present, owing to demands of criminal procedure. Even so, a substantial reduction in time spent in detention from current practice is anticipated in these cases, if not a reduction in the actual number of detention orders.

The revised plan offers the project, in addition to the advantages noted above, a presence in the tribunal itself and the opportunity to demonstrate the value of a rapid community ties interview to a wider audience. Consequently, it offers a greater possibility of subsequently extending the project to an earlier period in the process and affecting the number of detention orders.

Its principal drawback is that researching the project's impact will be more problematic than under the earlier format (1).

(1) It should be noted that the limited number of cases handled before the suspension of the first phase made a statistically reliable evaluation of its impact impossible. Had it run longer, however, the sampling procedure would have permitted such an evaluation.

In particular, it will be difficult to untangle the effects of the community ties interview from those of the judge's predisposition in favor of release, since it is the judge himself who selects the cases. To combat this problem, time series data on the behavior of individual judges and the system as a whole will be examined for changes that can be attributed to the introduction of the project. In any event, if the project gains sufficient support to be extended to the pre-"arraignment" period, a richer analysis of its impact can then be done.

It is anticipated that operations in this new phase will begin the first week of April at the latest.

While difficulties and disappointments have been encountered during the development of the pretrial release experiment, Vera staff feels that these have, for the most part, now been surmounted. Confronting them has accelerated the learning process and more readily exposed the values, conflicts, and compromises that give the French criminal justice system its true -- as contrasted with its theoretical -- character and distinguish it from other systems. Although the problem chosen, pretrial detention, is sensitive and thorny in France, the project seems to have had the dual effect of strengthening the Ministry's determination to attack the problem and of making practitioners throughout the system aware of the Vera Institute and its experimental approach.

Temporary Release

Since liberalizing reforms were implemented in 1975, the number of temporary leaves from prison granted annually has increased steadily to more than 15,000. While failure rates vary considerably among prisons, the overall figure has remained low (3.4 percent failures to return, 1.2 percent new offenses).

Nevertheless, some dramatic incidents involving releasees in the past year have created widespread public uneasiness about the program and made it a central issue in a continuing public debate over the problem of violence. Pressures on the Ministry to curtail or even eliminate temporary release are strong and growing stronger.

Vera was invited by the Ministry's Penitentiary Administration in December, 1977, to collaborate with its National Center for Penal Research (C.N.E.R.P.), in a study of the temporary release program with the objective of improving the selection process. The study is to be based in large measure on the research model developed by Vera for the New York State Department of Corrections. During the first phase, a random sample of both successes and failures on leave from six prisons is being studied to determine whether characteristics exist that distinguish the two groups with sufficient reliability to be useful in developing a selection tool. A second stage will involve creating one or more versions of such a tool (perhaps a point system as in New York), using the results of the first stage research, and testing them against ongoing release decisions in several prisons. If these tests prove that such a tool can reduce administrative burdens and increase equity of decision-making without increasing the risk of failure, it will be made available for use by sentence judges and committees charged with making release decisions.

In December and early January, Vera and C.N.E.R.P. selected the six prisons to be studied in the first stage, contacted their directors and corresponding sentence judges to inform them of the research, developed and tested the research instrument, and selected a sample of 550 cases. Data collection began in February and is expected to last through April. Analysis of the data will be done in cooperation with the computer service of the Ministry's Juvenile Justice Research and Training Center at Vaucresson.

Failures to Appear for Trial

Throughout France, more than 90 percent of defendants charged with délits (the broad category of offenses that includes most misdemeanors and all but the most serious felonies in American terminology) are free on their own recognizance before trial. In Paris, 30 percent do not appear for trial. French criminal procedure permits judgments to be rendered in such cases and, if rights of appeal are not exercised in prescribed periods, executed. It is generally believed that defendants convicted "in default" are given harsher sentences than those who appear for trial. A recent survey indicated that 24 percent of sentenced offenders arriving in one Paris prison had been convicted by default.

The summons process and administrative problems involved in getting defendants to court are of particular interest to the Vera Institute, which has been involved in a number of projects in New York aimed at increasing the use of summonses in lieu of detention and lowering the failure-to-appear rate. In December, 1977, and January, 1978, a C.R.P.C. staff member, assigned to Vera, studied the French summons process closely, holding interviews with a number of people concerned with the default issue : Ministry staff, judges, prosecutors and defense lawyers. It is their general opinion that defaults are enormously costly to the criminal justice system and impose unequal hardships on defendants. They feel, too, that prosecution "in absentia" is not in keeping with the spirit of the law, and that something needs to be done soon. Most put a large share of the blame for the problem on an antiquated notification system that is incapable of coping with the mobility and relative anonymity of the urban "delinquent" population.

In January and February, 1978, Vera undertook a pilot study of defaults in five chambers of the Paris tribunal to determine more precisely how the notification process functions,

where it breaks down, the consequences of breakdowns for the courts and defendants, and possible remedies. One Vera and one C.R.P.C. staff member observed trial sessions in these five chambers and examined case files both of defendants who appeared and those who did not. This inquiry substantiated the initial hypothesis that a lower default rate is possible and would result in fairer sentencing. A pilot experiment testing a modernized, simplified notification process is currently being discussed with a special commission established by the Ministry of Justice to study the problem of defaults and recommend legislative remedies, as well as with other Ministry staff and judicial authorities. Should the idea of a pilot project be accepted, Vera and C.R.P.C. staff would collaborate in developing it with a prosecutor's office; most likely in Paris but perhaps in one of the outlying suburbs instead.

Publications

In January, 1977, Herbert Sturz, Vera's director, Michael Smith, deputy director and head of the London office, and Paul Strasburg, associate director and head of the Paris office, each presented papers at a conference on Present Day Problems of Criminal Justice in Bad Boll, Germany. These papers, covering various alternatives to incarceration, were subsequently published in Protokollidienst (January, 1977), a publication of the Evangelische Akademie, Bad Boll.

Mr. Strasburg published an article describing the French juvenile justice system and comparing its functioning to that of the American system, in Judicature, Vol. 61/No. 1, June-July, 1977 (copy attached).

In collaboration with Philippe Chemithe, director of the Ministry's National Center for Penal Research, Mr. Strasburg published an article on the French sentence judge -- a magistrate charged with overseeing the execution of sentences -- in Corrections Magazine, March, 1978 (copy attached).

Finally, Mr. Strasburg has prepared an article in collaboration with Jacques Vérin, magistrate in charge of the Ministry's Research Coordination Service, on pretrial detention in France and the issues involved in transferring Vera's U.S experience in this area to the French context. The article will appear in a forthcoming issue of the International Annals of Criminology.

Conferences and Seminars

From January 17 to 20, 1977, Mr. Strasburg, Mr. Sturz, Mr. Smith and Charles Morris of Vera's London Office attended the above-mentioned conference on present-day problems in criminal justice in Bad Boll, Germany. One product of this conference was an invitation to two German researchers to visit Vera in New York as interns for several months in 1977. At the end of their internship, one of them, Mr. Christian Pfeiffer, returned to Munich to establish a supported work program, modelled on the Wildcat Service Corporation, which now receives support from the German government in the amount of 500,000 DM per year.

From November 7 to 11, 1977, Mr. Strasburg represented the Vera Institute at a conference on criminal justice research sponsored by the Aspen Institute in Berlin. The conference was attended by researchers and policy makers from seven European countries, Canada and the United States.

In January, 1978, Vera was contacted by the Probation Committee in Lyon which had heard about Vera's pretrial release experiment in Paris and was interested in the possibility of applying its methods in Lyon. A meeting was held with the sentence judge who directs the probation service in Lyon and members of his staff to discuss the applicability of Vera's methods to their needs. It was agreed that they would draft a general outline of their proposed plans which will then be discussed with Vera staff in Lyon, probably in April.

Should agreement be reached on a project, Vera's role would probably consist of technical assistance in planning and perhaps facilitating contacts with similar experiments in the U.S and England.

Vera was asked in February, 1978, by a French organization called Autrement, which attempts to bridge the gap between research and practice in the field of social innovation, to collaborate in organizing a European-American conference on alternative forms of employment for marginal populations. The conference will bring together three Americans, ten French, and two other Europeans who have developed and run experimental projects in this field. Vera is aiding in identifying the non-French participants.

Mr. Strasburg has participated in several other seminars during the past year : a seminar on experimentation in criminal justice at the National School of Penitentiary Administration (E.N.A.P.) for prison sub-directors in training; a similar seminar at the Faculty of Law of the University of Paris; and a seminar on violence at E.N.A.P. for prison counsellor-trainees. In addition, various members of the Vera staff have participated in conferences and seminars on such topics as drug addiction and treatment, alternatives to prison, and employment for ex-addicts and ex-offenders.

Staffing

The director of the Paris Office, Paul Strasburg, has been present since the office opened in January, 1977. A Vera researcher from New York, Alan Heaps, spent five months between April and September, 1977, assisting in establishing the initial pretrial release experiment. In February, 1978, a deputy director, Pierce Gerety, arrived from New York.

Two French research assistants have been employed with funds subcontracted to the C.R.P.C. to participate in the various projects described. One began May 1, 1977 and the second on July 18, 1977. Both are still working with Vera. A third researcher from C.R.P.C. has been assigned to work on the Vera projects half-time since September, 1977. In addition, several short-term research assistants have been employed from time to time as need arises.

Support services are, for the most part, provided by the Research Coordination Service. Beginning in February, 1978, however, the increasing load required the addition of a part-time bilingual secretary.