VERA INSTITUTE OF JUSTICE

PRETRIAL SERVICES AGENCY

MEMORANDUM

To: The July Third Brown Baggers (292 Conference Room 12:30)

DATE: 3 July 1975

FROM: Jim Thompson

SUBJECT: "Restructuring" and "Increasing ROR's"

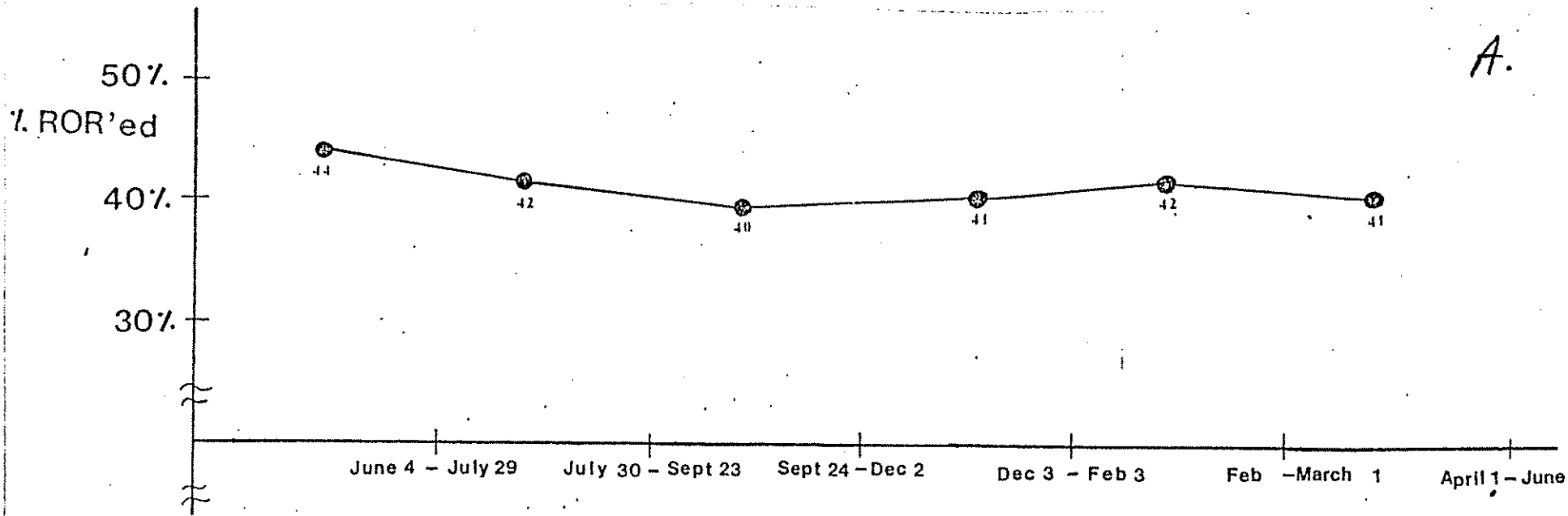
To summarize a more complicated story than bears telling here, most of us expected that PTSA, by introducing better interviewing, verification, and follow-up, would increase ROR's at Criminal Court arraignments in Brooklyn. The dramatic result of our first year evaluation was a non-event: there was absolutely no increase in releases, though who got released seemed to be affected by PTSA (to wit: high community tie defendants facing relatively more serious charges who are recommended ar ROR'd, at the cost of lowered ROR's among not recommended defendants facing less serious charges). The problem of PTSA's level of releases took shape.

Among the documents enclosed, item # B "A Conceptual Model" was an attempt to explain why ROR's should increase with the successful operation of a bail agency able to win the support of the court. The # D document, "Post Arraignment Release Efforts" describes a series of additional efforts to get defendants out which we implemented in the face of no changes in ROR at arraignment and in the face of a very expensive alternative to arraignment ROR, namely Supervised Release. "Bail Reevaluation," by Dan Freed, critiques the proposal to introduce the additional release alternatives, and it brings us to the second problem for PTSA: the scope and exhaustiveness of PTSA's release recommendation.

It is important to understand that the question of the scope of the release recommendation is independent of the effectiveness of the agency in obtaining releases. By increasing what is taken into account by its recommendations, PTSA may well "succeed" by lowering ROR rates.

I suggest we consider these two problems with reference to research possibilities, and with particular reference to this summer's interviews with Criminal Court judges.

A.



PROBLEM ONE: THERE WAS ABSOLUTELY NO INCREASE IN THE COURT'S ACCEPTANCE OF PTSA'S ROR RECOMMENDATIONS DURING THE FIRST YEAR OF OPERATIONS (OR SINCE)

This was an attempt to explain increased ROR's.

A Conceptual Model for Pretrial Release Programs

Jim Thompson 22 March 1974 FIRST DRAFT.

A pretrial release agency strives to achieve just two rather simply stated goals: (1) to increase the number of criminal court defendants who are released on recognizance (at arraignment but also later) and (2) to decrease the number of defendants thus released who fail to appear in court or who commit new crimes.

To obtain releases, the agency must strike a "bargain" with the court (formally, with the arraignment judge, but the influence of the prosecution may be predominant). In making this bargain, the release agency attempts to reassure the court that the defendant, if released, will re-appear in court and will not pose a "danger to the community" while released. The favorable release decision can be viewed as the counter-payment which the court makes to the agency if it has been reassured on these points.

How does the agency go about reassuring the court concerning the risk of releasing defendants on own recognizance? There are two alternatives: (1) the release agency, by interviewing defendants prior to arraignment, may succeed in predicting which defendants pose the greatest dangers of non-appearance or of recidivism. Reassurance takes the form of predicting risk in these two senses. (2) The agency may concentrate on following-up released defendants, and offers its success at follow-up as grounds for reassuring the court concerning the risks of non-appearance or recidivism.

Neither predicting which defendants pose the greatest risks if released nor following-up released defendants are procedures which the release agency could undertake without error. An obvious approach would be to combine the two approaches and to make some attempt at getting each approach to correct weaknesses in the other. A combination of prediction and follow-up complicates conceptualization of the release agency; for example, the combination poses a new prediction problem, that of foretelling success at follow-up (contacts with defendants, check-ins, and so on). These complications will be taken up later.

Whichever strategy or combination of strategies the agency adopts to reassure the court, it is necessary for the agency to enter into a relationship with the defendant. Prediction requires that defendants be interviewed; follow-up requires not only interviews, but efforts to persuade defendants to come back into court and efforts to counter early signs that they will not do so. Follow-up requires a more richly dimensioned relationship with defendants than does prediction: <u>information</u> is channeled to defendants, <u>warnings</u> are delivered, <u>phone and personal</u> contacts are brought into play. This richness suggests that follow-up is the more expensive course. It is likely that at each stage of the defendant's itinerary through the court, predictive measures will be preferred over follow-up measures if each has equal impact on non-appearance. The form of agency operations, the backgrounds of agency staff, and the style of its approach vary with changes in the prediction/follow-up ratio. These complications will also be taken up later.

The relationship between the release agency and the defendant can also be stated in terms of a "bargain". The agency offers freedom from pretrial detention to the defendant, and it expects in return to receive the defendant's compliance with agency and court directives. But to model this relationship in the terms of a bargain or exchange between agency and defendant may be quite misleading. The defendant may consider his arrest to be illegitimate. He may not be aware of the release agency's efforts on his behalf. He may believe he could easily have obtained release even without the help of the agency. Each of these contingencies suffices to undermine the exchange model of the relationship between defendant and agency. But of course they also offer interesting possibilities for utilization as intervening variables in cross-tabulations.

Ignoring for now the draw-backs of the exchange model, what can be said of the relationship between the bargain in which the agency enters with the court and that which it enters with the defendant? A few tentative propositions can be stated:

— The terms on which the agency and the court settle in their exchange of reassurance for release influence the agency's ability to arrive at favorable terms in its bargain with the defendant;

— The converse is also true; having extracted favorable terms in its exchanges with defendants (having obtained compliance with its and the court's requirements) strengthens the agency's position with the court;

— It follows from the first two propositions that there are two stable states in the double bargains: that of low release rates and high rates of non-appearance and high release rates and low non-appearance; the other two states (high-high and low-low) are not stable;

— Over time, effective bargains with defendants and with the court produces an "institutionalization" of release agency goals;

The propositions set forth above (of course they must be considered in great detail) may also shed some light on cross-sectional comparisons of pretrial release programs. Programs can be differentiated in terms of their use of an objective point system for making recommendations, their screening criteria for recommendation eligibility (severity of charge, certain specific offenses, prior record, age of defendant, etc.), and in terms of their use of "street-wise" staff or staff more attuned to the practices of the criminal court. Each of these program differences can be interpreted as affecting the costs of making bargains between agency and court and agency and defendant, and in terms of the values of the bargains to the agency, court, and defendant.

For example, the agency which does not recommend release for serious cases offers a less valuable service to the defendant but offers a less costly service to the court. The trade-offs between maximizing value to defendants but reducing costs to the court will no doubt take on a complicated patterning over time. Programs in early stages of implementation, and enjoying only tentative acceptance by the court, will trade away some options of value to defendants and win in return greater court acceptance. But court acceptance translates into a dimension of value to the sub-group of defendants still eligible for recommendations: more of them will get out because of the earlier "compromise."

Which costs and values agencies consider most manipulable doubtless depends to some degree on how the agency becomes incorporated into the political and administrative framework of the criminal justice system.

Another example of a topic which can be treated in terms of the double-bargain model for pretrial release is the problem of the institutionalization of release goals and practices. One of the propositions stated earlier asserts that the low release rate - high non-appearance rate outcomes are highly stable. The system is stable at a "low level of effectiveness. The demonstration project can be seen as a short-term, specially intensive effort to drive up release rates (or reduce non-appearances) even without the advantages of offering profitable exchanges to court or defendant. Assuming success in this, the "institutionalization" phase will be bolstered, presumably, by the stability of another pair of outcomes: high release rates - low non-appearance. Each party to the doubled-up bargain with the agency is aware of the benefits which it derives from the agency's work anc continues to make the expected counter-payments.

Here is what the evaluator reported after comparing PTSA's and Probation ROR's release rates.

C.1

The tables show that PTSA procedures allow release recommendations for more defendants (68 percent are eligible versus 40 percent actually recommended by Probation) and that fewer defendants eligible by PTSA's criteria actually fail to appear in court: 21 percent of the Probation recommended ever fail to appear versus 17 percent of the PTSA-eligible.

A comparison of only the right-hand columns of Table 4.6A and 4.6B shows that Probation recommendations "spread" the FTA rate by eight percentage points between recommended and not recommended defendants. PTSA procedures, on the other hand, spread the FTA figures by 23 percentage points.

The Release Recommendation and Court Release Rates

PTSA gives defendants favorable release recommendations almost twice as frequently as does Probation. For the purpose of this analysis, favorable PTSA recommendations include both the positive "recommended" category and the separate "qualified" category; favorable Probation recommendations are taken to include interviews bearing the Probation stamp as well as those on which the rating boxes "yes" and "verified" both have been checked. These two methods of rating favored defendants will be treated as one on the following tables.* All other interviews are categorized as "no label/

* This approach may lead to some overstatement of the number of Probation positive recommendations; however, there is no other appropriate category in which the relatively small number of such cases can be placed.

rating" (in the case of PTSA these are the "blank" and "all other" cases. See Chapter One, page 21.) These include warrant cases, cases in which defendants refused to be interviewed or in which their prior records were unavailable, and Probation's other excludable cases. Table 4.7 shows the number of release recommendations in each category made by each program.

TABLE 4.7

RELEASE RECOMMENDATIONS FOR ALL CASES BY PROGRAM

Recommendation:	Program: Probation	PTSA
Positive	33	43
Qualified *		21
No label/rating	52	18
Other	16	18
TOTAL %	101	100
(n)	(1983)	(2374)

NOTE: There is no equivalent in the Probation program of the PTSA category, "qualified". Nonetheless, it is separately listed. This is done because it accounts for a substantial number of recommendations and because, while a positive recommendation, it is not an unequivocal one.

Table 4.7 also shows that the difference in the relative number of PTSA and Probation favorable recommendations is accounted for by the fact that Probation refrains from making any recommendation almost three times as often as PTSA. The table shows that in 50 percent of all cases, Probation fails to give any direction to the court. Yet, as will be seen below, data show that where such direction is offered it is not ignored by the courts. Table 4.8 illustrates this fact, showing PTSA and Probation release recommendations on the basis of severity of charge and then the courts' response to these recommendations as demonstrated by the relative ROR rates. The release rates for favorably recommended defendants is always higher than the rate for negatively rated defendants or those for whom no recommendations were made. (See Table 4.8 on next page.)

A number of other facts also emerge from Table 4.8. PTSA release recommendations remain constant across charge severities;* Probation's do not. They describe a curve, peaking at the severity of C or D felonies. The nature of this curve confirms the impression gleaned from other sources

*The marked decrease in positive recommendations in the B misdemeanor or violation category is accounted for by the increase in the "other" category which is in turn explained by the fact that 25 percent of all those charged with B misdemeanors or violations have a warrant outstanding against them. These cases also include defendants rejected for Desk Appearance Tickets.

TABLE 4.8

AGENCY RECOMMENDATIONS AND RELEASES COMPARED
BY SEPARATE CHARGE SEVERITY GROUPINGS

	Recommendations		Release Rates			
Charge Severity:	Probation	PTSA	Probation		PTSA	
A or B Felony						
Positive	[18]	[45]	13		19	
Qualified		18		(8)	11	(14)
No Label/Rating	58	24	5		5	
Other	24	14	2		0	
TOTAL/AVERAGE	100	100	6		12	
C or D Felony						
Positive	[37]	[47]	50		53	
Qualified		24			39	
No Label/Rating	53	19	26	(24)	24	(29)
Other	10	11	22		13	
TOTAL/AVERAGE	100	100	35		40	
E Felony or A Misdm.						
Positive	[35]	[44]	64		68	
Qualified		21		(26)	53	(39)
No Label/Rating	51	17	38		29	
Other	17	18	50		13	
TOTAL/AVERAGE	100	100	48		49	
B Misdm. or Violation						
Positive	[29]	[29]	82		84	
Qualified		21		(19)	83	(52)
No Label/Rating	47	13	63		32	
Other	25	37	70		38	
TOTAL/AVERAGE	100	100	70		60	

TABLE 4.8A

CASE TOTALS IN SEVERITY OF CHARGE GROUPINGS

Program:

	Probation	PTSA
A or B Felony	221	312
C or D Felony	761	1008
E Felony or A Misdemeanor	710	726
B Misdemeanor or Violation	178	171
TOTAL	1870	2217

that, hampered by insufficient staffing, Probation focused its efforts where they would do the most good - on middle range charge severities (not on the severe charges, where the court is unwilling to ROR many defendants and not on the minor charges where the court is likely to ROR anyway).

The impact of a favorable release recommendation is seen most clearly in the A or B felony category. Twice as many defendants charged with A or B felonies are released by the court under the PTSA program as compared to the Probation program (12 percent versus six percent). All of this increase is accounted for by the release of defendants who were given a positive recommendation by PTSA. (That release rate more than compensates for the fact that the release rate for PTSA defendants in the "other" category was two percent less than that for Probation defendants in that category.)

Interestingly, the release rate for positively recommended defendants is always higher in the PTSA program than it is in the Probation program but the release rate for defendants who were <u>not</u> recommended is always higher in the Probation program. (This is most marked in the E felony or A misdemeanor and B misdemeanor and violation classifications where the release rate for non-recommended Probation defendants is almost twice that of the non-recommended PTSA defendants.)

There is consistently greater "spread" between the release rates of positively and negatively recommended

defendants in the PTSA program than in the Probation program, as is shown by the numbers on Table 4.8 which have been circled. From the spread it appears that judges recognize the PTSA categories as including some recommendations which are clearly positive and others that are clearly negative, and that they treat these recommendations accordingly, releasing significantly more positively than negatively rated defendants. * The existence of such a spread makes it extremely difficult to speak of an aggregate or average rate for the programs (it is four out of ten cases for both PTSA and Probation). The small number of defendants released when PTSA effectively says "don't release" and the relatively high number of defendants released when PTSA effectively says "release" invariably produce a meaningless average figure. Of greater significance is an agency's ability to place defendants in meaningful categories and to predict subsequent failures to appear.

It has already been shown that PTSA does a better job than Probation of placing defendants in categories which have meaning and are accepted by the courts. Rates of failure to appear remain to be compared.

5. Failures to Appear and Agency Recommendations

The positive release recommendations of both programs identify defendants who, if ROR'd are more likely to appear in

* The circled numbers in Table 4.8 mark the spread between "positive" and "no label/rating". The difference in spread is even greater if "positive" to "other" is compared.

One Agency response to no increase in arraignment ROR's was to attempt to increase post-arraignment ROR's. Here is one version of the rationale for this.

D.1

POST-ARRAIGNMENT RELEASE EFFORTS

Written Re-Argument

Besides the securing of ROR's at arraignment, the Bronx Office has begun work with defendants detained at arraignment and subsequently unable to make bail. During March, the first month of its operation in The Bronx, the Written Re-Argument Program secured release for an additional 29 defendants at their first post-arraignment appearances. An additional 11 defendants received a lowering of bail at the same time at which a letter report prepared by Written Re-Argument was presented. In all, 99 letter reports were prepared for the court.[4]

The goal of PTSA's Written Re-Argument Program is to re-examine the case of every defendant who, at arraignment, was "Recommended" or "Qualified" by PTSA for ROR but who was not ROR'd or freed on bail at that time. This goal requires virtually up-to-the-minute processing of cases by the Agency, in order that letter reports be made available to the court in time for the first post-arraignment adjournment - typically two days after arraignment.

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4. *These letters describe verified factors in defendants' family backgrounds, residential, and employment histories which suggest that release on recognizance would not bring about undue risk of non-appearance in court. Later Operations Reports will report appearance data for defendants released in this program.*

During March, for example, of 399 cases eligible for the program, 255 were reviewed in time for presentation at the first post-arraignment appearance. Of these, 156 were rejected for re-presentation because defendants had already secured release on bail (66 cases); PTSA was unable to verify family and community ties of initially "Qualified" defendants (46 cases); defendants were rejected for reasons related to their criminal record (26 cases); and they were rejected for miscellaneous other reasons (18 cases).

Third Party Release

On March 19, 1975, the first defendant secured release post-arraignment as a result of work by PTSA's Third Party Release component. In this program, PTSA attempts, without re-interviewing the detained defendant, to mobilize concerned family members or others in the community willing to come into court to vouch for the defendant's reliability in making his court appearances. Among the Bronx defendants, it has been difficult to secure third party sponsors. Operated to date as a "one man show" in PTSA's Service Office, four defendants have secured release through March 30th.

Supervised Release

The most challenging cases for post-arraignment release efforts are reserved for PTSA's Supervised Release program. Staffed by four counselors, one data assistant,

and a coordinator, Supervised Release concentrates on defendants facing felony charges in the Supreme Court. The program's first release was secured on December 6, 1974. Through March 30, 1975, 17 defendants (including eight early releases obtained in Criminal Court) have secured pretrial freedom under Supervised Release. In the same time period, two defendants have been terminated by the program. There have been no re-arrests of program defendants, and there have been no failures to appear in court.

The diagram on the following page summarizes PTSA's post-arraignment release initiatives. Each of the rectangles on the right-hand side of the page symbolizes one of PTSA's release initiatives. A defendant is channeled through the series of initiatives on the basis of three factors:

(1) His initial recommendation by PTSA;

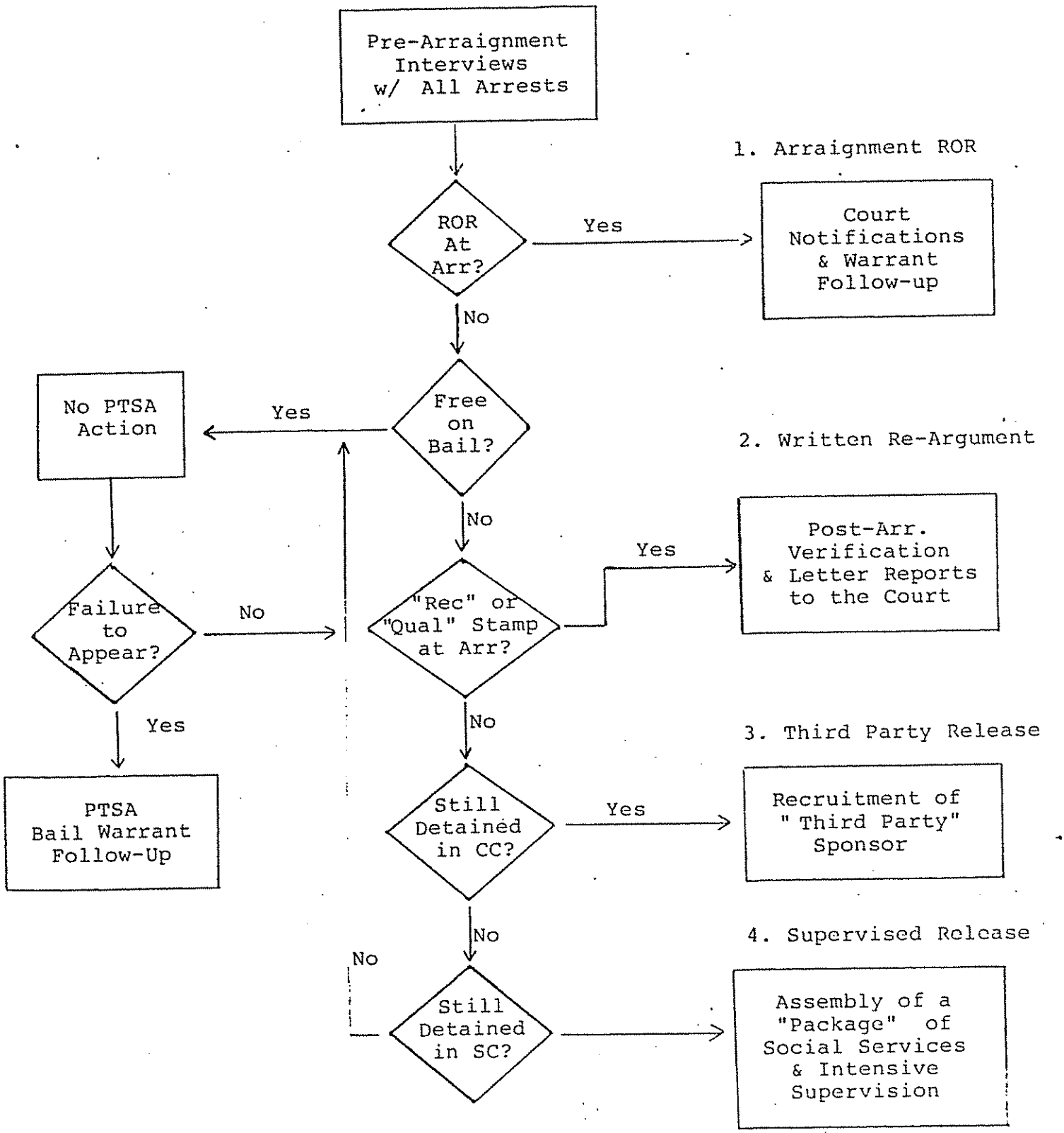
(2) Whether he is ROR'd or makes bail during earlier stages of the pretrial period;

(3) Whether he is indicted on a felony charge.

The rectangle on the lower left-hand side of the page is drawn in to indicate that even defendants free on bail become part of PTSA's caseload if they fail to make a required Criminal Court appearance. In sum, the diagram describes a graded series of increasingly intensive efforts (which are increasingly costly) directed at releasing all defendants who can be reliably brought back to court.

D.4

PTSA's RELEASE PROGRAMS



Here are Dan Freed's comments on the proposal for post-arraignment release efforts. They introduce the second problem, namely, the scope and exhaustiveness of PTSA's release recommendations.

Vera PTSA
Guggenheim PTSA Workshop
Chron
9-1 ✓

E.

August 15, 1974

TO: Herb Sturz
Bob Coldfield
Lee Ward
Lucy Friedman

FROM: Dan Freed

Re: Bail Reevaluation

In reading Ben's August 8 proposal, which I like, several questions occurred to me, some of which have been raised before.

1. To what extent do PTSA's criteria coincide with, or fail to match, the statutory criteria for setting bail? (I am writing this without your normal form or the statute in front of me). answer?

2. Is the proposed Bail Reevaluation form, Attachment A, deficient in failing to make any mention of (1) prior record of appearing or failing to appear in court, (2) prior criminal record, (3) current charge, (4) weight of the evidence against the accused? If these factors are required to be considered by statute,

   (a) should they be included or explained by PTSA?

   (b) should their deletion from the statute be urged on grounds of irrelevancy to a court's determination?

   (c) how can PTSA justifiably make a release recommendation without addressing what it knows will be the potent counter-argument of the D.A.?

3. As one independent measure of PTSA's and the Court's efficiency in securing the release of all appropriate pretrial defendants,

   (a) is the final disposition and sentence (including the question whether any time is served after conviction) checked in every case, or in a sample of cases, in which PTSA unsuccessfully urged pretrial release?

   (b) if not, why not?

The following are qualitative observations of arraignment court bail decision-making. They are taken from field notes made by Eric Arnould, working for Paul Lazarsfeld, PTSA's first year evaluator.

Notes and Observations in the Arraignment Part 2/5/74 F. 1

2:10 court in session, 3 legal aid lawyers, 2 ADA, 4 ct. officers, PTSA ct. Representative, recorder, clerks

1) D. woman, new arrest weopens and assault and drugs, D. was young knitted brows, poorly dressed, looked confused. No attorney/client interaction here D. looks down reading L.A. papers as attorney and ADA confer at the bench, whe the L.A. comes back he does tell the client what has passed, after amking a plea for lower bail, D. makes to walk back into the detention area, troubled, is stoppedb rought back, bail is set to hight for her to meet seh is led out, lawyer says nothing to her as she goes.

((((The client/attorney contact seems an important factor extrinsic to the PTSA/D. contact which nevertheless has a large determinative effect on the successful inauguration of the exchange that must take place for the D.'s wellbeing. If thre si ltittle or no interaction and this phase, the givieng out of our card is likely to have a less than overwhelming influence on the defendant.))))

At this junctire Laura O. comes back from a grievace session with Dick, replacing an interviewer whi had taken her place. s She breefly reports on the meeting that he was open but likely to act oinly on the 8ssue of the suggestion box in the pens. Mixed success. The inteviewer left after th is to go back down.

A UCO spoke to Laura inquiring whether she had to work the whole day, and said well have fun when she affirmed she did. T he recorder also asked her how she wasy doing. THe resident LA. lawyer and several colleagues speak infromally and as insiders with Laura, not as equals or luncheon parnners though.

2) This was a male defendant returned on a warrant for harassment and disorderly conduct, he pled guilty. The D. stoo head down, working his lips, his fingers tensed on the table, scared it seemd. He was not employed and had no response to the judges questions. He was given a Cond. Dis.

3) This defendant was amd only 16 yrs. old and had been Recommended by PTSA. He was Spanish-speaking, stood with a surly cock to his haed, BCEP was there in his behalf, The Judge mentioned several times to the ADA during the conference befroe the bench that he had been recommmended by PTSA. THE L.A. mentioned that his sister was on hand. He was ROR'd and given his card by the lawyer who pinted and indicated briefly what it was aobut. The D. galnced at it for several seconds and then went out with the BCEP person without looking at it agiain.

4) The defednat was young, 17, male a dandy, who calimed he had missed his previous court date because his mother was ill. He stood stiffly looking at judge, at becnh, seemed uptight, andhostile. He spoke out only to give his correct address whe n the judge asked the arrestinf officer if he knew where to find the defendant again. At the conference the judge noted there were several unverified ROR forms on the D., the ADA pressed the issue of the unlikliehood of the D.s' return, but the judg didn't want him in jail for two weeks being so young. THE L.A. gave him the PTSA card and pinted out his obligation, the the D. asked a question about it and nodded when answered. Then both the L.A. and the D. left the room separately but fast.after the judge had warned him of the consequences of failing to appear.

5) Three male D.s wer brought in all of whon had received PTSA recommendations but the charges were 110/murder. All three

wore black leather smood with arms folded. Complainant still in hospital ADA asked~~xxxx~~ $5000 ea., family members were presnt looked on very upset. One woman shook a finger at one of them. The L.A. stressed this was their first offense, there was an issue of self-defense to be considered. The ADA asked for high bail and while he did so the L.A. attorney spoke w th his clients In all three cases the judge set bails too high for the men to pay, amounts ranging from 1500 to 2500 dollars.

9) This was a male D. defended by a woman L.A. attorney, charged with burglary,abut it turns out he was supposed to be in the bilding, got drunk and fell asleep according to the L.A. Has an invalid wife, about to take civil service exam, only one arrest previous. The judge mentioned the favorable ROR sheet . D. was ROR'd over ADA objections. The L.A. attorney wrote out th PTSA card while the final court buisness was being transacted, and gave it to the D. witha bright gesture. He took it but asked her aobut it. She took it back and made some adjustments as to dated and palces over by the L.A. table. She gave it back to him after about a minute after going over it with him. He took it and left. (((((This lenghty an exchange over the card likely to bring better results I should think.))))

10-12) 3 Rec male Ds. represented by ~~L.A.~~ private attorney. picked up on gambling an bribery chargess. THE LA. attorney stressed that they were family manawith familes present. The D.s were shuffling, one in particular looked nervous, older men Spanish speaking requiring an interpreter, one prevois arrest, have roots in community, will return. The Ds. hands are clasped, they look around at their families wondering and worried. Two fo theme wsre ROR'd, but the judge wouldn't ROR the one with the bribery charge

against him. He had looked the most upset of the trio. THE ~~xxA~~ attorney grotested that they could not pay and asked for a lower cash alèernative, which was refused. The lawyer did not give out the PTSA cards. Afterwards the interpreter came over to talk with Laura Otten and apologized for not having given the men cards, she told him ti was alright and not his responsibility. She said to me that prèvate lawyers never give out the cards. LAter as the interpreter was aobut to leave but when we were joined by another fellwo he ~~xxxxxxxxxxxx~~again ~~xxx~~ not having notedd given out the cards

ADA Bail Experiment

Still another attempt at increasing ROR's at arraignment involved soliciting the Assistant District Attorney's consent to ROR in lieu of a bail recommendation of $500 or less. The bail recommendations were witheld just in cases where defendants had been "recommended" or "qualified" by PTSA, and we in turn promised to report to the DA on the failures to appear among these defendants. The experiment did not succeed in increasing ROR rates, but it did indicate that (at lease with some judges) the young, inexperienced ADA has relatively little influence on the bail decision.

G.2

April 24, 1975

To: Jim Thompson

From: Dan Freed

Re: PTSA-ADA Bail Experiment

Thanks for sending me the draft report on your experiemtn with the Brooklyn DA. I found the data very interesting, the results not surprising, and the prospects (if I understandx the project correctly, which I may not because it is not described in much detail) for appreciable reform almost nil. I will try to give my reasons below, so that the opportunity for you, Herb andBob to disagree with me can be maximized.

What I found most significant are the following: no change in the overall release rate; a preoocupation by PTSA with the problem of failure to appear; the preoccupation of ADA's and judges with severity f the offense; and the absence of anything in the experimental design to bridge the communication gap inherent in a project which makes FTA-reduction recommendations to a crime-reduction ADA-court system. My own guess is that until PTSA speaks to the concerns of the court, it has effectively reached the limits of its release effectiveness, and even a 100% guarantee that every released defendant will return to court will not appreciably influence the release rateor reduce the detention population. I would like to be wrong in this assessment, but have seen nothing in PTSA's history which suggests a more optimistic picture.

I think you asked the right questions in your note about the effect of increased release on delays in dispositions, and on increased chances of defendant success. My hope is that you are going to trace these through in your case histories.

G.3

I do not understand the references on PP. 6 and 10 to PTSA's influence on the court and the ADA being independent of charge severity. The data seems to me to prove the opposite, and the observations in court seem to confirm that. Nor do the large numbers of court reductions of ADA bail recommendations seem significant (except when the reduction is to ror) until we know whether the reduction is intended to produce release, and in fact produces release. Otherwise reduction may simply be a game in which the court demonstrates independence by stating a decision different fromthat recmmended by the DA, but inntendding and accomplishigg the same result--detention. If I'm detained, it doesn't matter whether its on 5000 bond I couldn't make, or 2500 Bond set by the reducing judge, which I still couldn't make.

The only experiment that strikes me as worth trying in an effort to increase release rates without adverse effects that are too high to tolerate would involve the following: (1) PTSA should make its own assessment, or guess, (whether or not disclosed outside the agency) as to the likelihood of the the defendant to commit serious crimes if released, ie try to put itself in the shoes of the DA and court in thinking about crime, figuring out how to predict it (whether or not it believes prediction is possible), and then waiting to see how often it is wrong or right in cases in which release is granted; (2)ADA's shoudl be asked to do the same, whether on the court record, or simply internally in their office, so that they too (and yr.) can chekk their predictive ppwers; (3) whenever an ADA asks for bail in any amount other than ror, he should be required to state whether he intends, and predicts, that the defendant will thereby (a) secure his release, (b) fail to secure his release, or (d) the ADA doesn't know which, and doesn't particularly care; (4) the same as (3) for judges: are they trying by a non-ror decision to release, detain, or simply blur the outcome by letting the decision be made, out of sight, by the accused and his bondsman.

G.4

The English system, as you know, explicitly authorizes magistrates to remand in custody defendants who they believe will commit further offences if bailed. We are now trying to find out what happens in cases where the police object to bail on that ground, but the court releases the defendant anyway. We have no returns as yet, but you seem to have a good opportunity to at least propose a similar system as an experiment, even if all the predictions are made off the record for research purposes only.

As far as FTA is concerned, I suspect that PTSA and the system is perhaps unduly preoccupied with that question. While of course no one will say they want the court to release defendants they know will run away, it's not entirely clear that the issue is one of high priority. For example, (1) does the court routinely say that a defendant who is released and defaults will have a difficult time securing bail the next time? (2) does the court in fact lay great stress on priorfailure to appear in denying bail, or setting it very high, even in minor cases? (3) does it inquire in open court into alleged FTA in the past as a way to showing its importance? (4) does it lay stress on FTA in imposing sentencein open court? (5) does the DA often prosecute FTA defendants, or take a perceptibly harder line in plea barga ning on the substantive offense? (6) How else does the system manifest serious concern with FTA after the initial release?

Also: what does the court or DA do to prevent release in serious caases from delaying disposition? Do they even put high risk release cases on an expedited calendar and follow through, so that release will not distort di position, and given the defendant an undue advantage? I think the system may currently be distorted both by detention (when unnecesaary) and by release (when for a lengthy period). Until the latter distortions are addressed, detention will probably continue to be the easier (and per haps the wiser) way out, particularly when the charge is serous and the defendant seems dangerous.

-to: Jim Thompson
Bob

June 4, 1975

4.1

To: Herb Sturz-NYC
Michael Smith-London
From: Dan Freed

Re: Restructuring Bail Agencies--PTSA, Camberwell Green, Brixton

For the reasons summarized below, I have come to believe that all our bail projects should consider some fundamental changes in design, without which they may be close to the limits of their effectiveness and, in some cases, not worth continuing other than for short term learning purposes. While the suggestions offered here are at the moment only for intra-Vera consideration and debate, a meeting scheduled in the Home Office on February 13 to discuss spreading the lessons of Camberwell Green to other parts of the country makes it rather urgent that we formulate a position on some of these issues.

As background, my letter of March 21 expressed doubts whether a project formed to present community tie (CT) information to London courts was likely to have much impact on the rate of pretrial release (a) since, on a national basis, English release rates have risen from 65% to 78% in the last decade based on system absorption of the Vera idea; and (b) since likelihood to appear is by law only one standard for determining bail or custody, and in fact appears to rank quite low in the reasons for custody found by English researchers. In my April 24 memo to Jim Thompsom about the PTSA experiment in Brooklyn, I expressed similar doubts about the prospects for further improvement in PTSA's batting average so long as appearance for trial remained the sole basis of agency interviews and recommendations.

Observations and research over the past weeks has intensified these doubts and provoked some ideas for altering the structure and purpose of the different agencies. Some of the new information includes:

-PTSA's quarterly report which indicates (p.1) that its recommendation system accounts for only two of the five

criteria for bail setting cntained in the NY Criminal Procedure Law, but then goes on to suggest (p. 3) that judges (who have to consider all five factors) ought to release without bail many more defendants with serious charges because it will not result in a lower (you meant higher) ~~xxxxxxxxxxx~~ FTA rate;

-Prison Department statistics for 1973 in England (a detailed analysis of which is now in preparation and will be sent later) which show (1) that in every category for persons age 17 and above held in pretrial, presentence, or pretrial and presentence custody, less than half received prison sentences; (2) that the ten year trend, 1964-73, for pretrial receptions in custody was up 150% while sentences to prison dropped 3% in the decade and 15% in the last three years; (3) that the average daily population was similarly up 225% for pretrial prisoners in the decade compared to a 20% rise for sentenced prisoners (and a drop for sentenced prisoners of 9% in the last three years); and (4) consistent with the above, there was 10% less imprisonment before rather than after sentence in 1964 (46,000 vs. 51,000), but 30% more by 1973 (65,500 vs. 50,000);

Pret recpt / # auths

-Observations at Camberwell which suggest, at least to me, that if a project makes a report to the court, but neither recommends release to the court nor makes an assessment or prediction of its own, no standard exists by which project impact or potential can be measured; and that in any event if most custody decisions here (as appears from research studies and my own observations in all courts) as in NYC are predicated on law enforcement considerations rather than likelihood to abscond, recommendations based solely on CT's will probably have little impact and are not worth the cost of a CT-only project. These comments apply equally to a Brixton project and to the Judge in Chambers process, even though marginal improvement can be expected whenever a new project begins.

One trend that emerges from observations of this sort is of a growing disharmony between bail and sentencing, and between bail projects and bail decisionmaking. A variety of explanations is offered to explain the trend, but none is either satisfying or provable at present and my own conversations and observations in and out of court have failed to detect any policy to explain police objections to bail or magistrate decisions to remand persons in custody. As a result of a meeting at Scotland Yard several weeks ago, we have begun a series of visits to the police training academy and to various police stations to gain a better understanding of how police officers decide whether and when to grant or refuse bail at the station, and to object or not object to bail in court. The hypothesis on which I am proceeding at the moment is that apart from "experience" and "judgment," there is no policy or set of standards laid down by the police, the courts or Parliament (or their counterparts in the United States) that accounts in a rational way for a great many release decisions, custody decisions, or discrepancies between custody before, and release after, sentence. If this is accurate, bail agencies and pilot projects may be missing a valuable opportunity to contribute to a more coherent set of custody and release policies and decisions so long as they continue to avoid concerning themselves with the three missing factors in PTSA's jurisdictions, and the counterparts in the English process.

To be specific, the police and prosecutors and judges must and do consider everywhere (a) will the accused commit further offenses, (b) will he interfere with witnesses, and (c) is he likely toreceive a custodial sentence if convicted in this case. In some large number of cases it is fairly clear that most decisionmakers would answer yes to one or more of these questions, and in all likelihood be right. But in a larger number and proportion of cases, it is at least arguable from the noncustodial sentences, or the brevity of the custodial sentences, that items (a) and (c) did not mandate pretrial custody. It is also evident that item (b) is an important factor, but one not of large volume and one that, like appearance at trial, can be and is often amenable to effective conditional release.

Instead of remaining passive and silent in the face of haphazard, insufficiently informed, and ultimately unnecessary custodial remand decisions, why shouldn't a bail agency or project ---at least in those cases in which a pretrial custody decision on grounds (a), (b) or (c) is likely, or has been tentatively made---gather pertinent information about the prior offense pattern, prior sentences of imprisonment, the pattern of sentences in such cases, and the availability of alternatives to custody if some kind of conditional release might be appropriate? Such information might confirm the need for custody in some cases and dispel the need in others. But it would be information pertinent to the full range of factors which courts have to consider in balancing law enforcement needs, the preference for pretrial liberty, and the assurance of presence at trial, and hence would place bail agencies in a role more relevant than that they occupy at present.

eg PTSA

Whether or not such a role would be accepted by a system is of course a very controversial question. But an agency which, like PTSA and those in London, considers that its impact is too low can at least consider the above information and predictions on an internal basis, and then match its internal assessment with the actual decisions made by the courts and the aftermaths of those decisions. As a learning mechanism this would have a number of advantages. (And you will of course recognize the resemblance to the technique used in the Wilkins-Gottfredson study of U. S. Parole Board decisionmaking, which eventually resulted in the Board adopting a whole new parole decision system. See 84 Yale L. J. 810-902). The advantages include:

- having a single neutral agency consider all factors and information pertinent to release decisionmaking, in a more deliberate and scientific way than courts are currently able to do;
- enabling such an agency to better analyze and understand bail and custody decisions being made by the courts;
- enabling the agency either to conform its own information and assessment functions more closely to the standards being used by the courts, or, if the latter seem inadequate, proposing new standards for the courts to consider (much like the point system of the '60s);
- intervening, in an experimental way, in the long-

standing dispute over the prediction of future criminal conduct;

-developing new ways of tailoring pretrial conditions, or assessing the viability of residential facilities other than jails, for persons of some risk for whom secure custody may be unnecessary;

-enabling bail agencies for the first time to monitor the outcome of cases, and feed the resulting information back to bail decisionmaking.

In short, the agency would for the first time be looking at the whole defendant, not just his noncriminal ties, and thus serve a function relevant to that of the police and prosecutor, rather than stopping short of the point at which they are most concerned about release and have the most influence on the court. If the agency came to agree with police recommendations in the more serious cases, the system would not change much but our knowledge of the quality of police and prosecutor custody recommendations would be enhanced. If the agency came to disagree with law enforcement recommendations in a significant number of cases, and had objective information and research to back up their disagreements, it might have a profound effect on the future policies of those agencies, and on the courts.

Most of all, the proposal would help establish a standard for assessing the quality of an agency's work, and a realistic standard for the proportion of persons who can realistically and safely be expected to gain release under a well-functioning bail system. The statements in PTSA's quarterly report referred to on pp. 1-2 above suggestx that no such standard exists, or could exist, so long as PTSA makes recommendations on two factors and expects judges who must consider five factors to be more liberal in the more difficult criminal cases; and the Camberwell Green project, by being precluded from making any recommendations at all (a decision I would hope the Home Office might reconsider) and by not making any evaluations or internal predictions as to releasibility, is even farther away from esta lishing a standard. The CG and Brixton projects are in a sense closer to being able to become full-scale bail agencies since all factors relevant to bail or custody are out in the open and amenable to comment (unlike the less candid U.S, system); while PTSA

is closer in so far as it already has a well-recognized recommending role, and high batting average in securing acceptance. In many ways, therefore, the proposal tendered here ought to be considered in a cooperative way by Vera's projects in both countries.

There are a number of factual assumptions and diplomatic difficulties associated with gaining acceptance of the larger role suggested here for bail agencies. One is that judges are largely unaware of the extent to which they place more people in jail before trial and release them afterwards (because they get no feedback on their bail and sentencing decisions), or indulge in the present practice for reasons not authorized by law (punitive remands), or think it is not very important because credit against sentence or noncustodial sentences will compensate for any pretrial mistakes. Another assumption is that neither the police nor the courts know the extent to which they overpredict future offences, or the likelihood of custodial sentences, because data of that sort is not collected. Hence they do not check all releases in cases where misdonduct was predicted by the police to see how much or little of it materialized; and they do not check the original prediction or nonprediction of misbehavior when totalling up statistics of persons who were subsequently released and rearrested. Third is that the process cannot be a fair one for determining custody prior to trial when good lawyers, in an effective adversary hearing, with adequate information available, are all absent. And fourth, we will dontinue to remain poorly informed about the dynamics of bail decisionmaking, and ways of improving that process, until judges give meaningful reasons for their decisions in controverted cases, and those reasons are subject to scrutiny by bail agency members who know all the facts of the case and can try to fit decisions into patterns for further analysis.

The larger agency role posited here will considerably complicate the problems of leadership and staffing. By definition, much greater sensitivity to law enforcement perspectives and needs will have to become part of the staff training and operations. And in preparing information for the court, and studying how judges thereafter make decisions, it will mean that the agency is digging more deeply into the judicial function and process. These are troublesome proposals, but they may also make a useful difference.

F.1

D R A F T

RESEARCH TOPICS FROM
DAN FREED's 6/4 MEMO

1. Assertion: there is a ceiling on further increases in rates of ROR (PTSA: Ca 60-70% of Recommended & Ca 40-55% of all interviews; England: 78% of total population) because:

   a) "system absorption" of the ROR concept;

   b) limited scope of bail agency recommendation criteria in relation to judges' (implicit) release criteria; and

   c) limited scope of bail agency recommendation criteria in relation to bail statutes

1. Researchable Topics:

   a) In the face of wide variations in judge by judge ROR rates (from Ca 25% to Ca 65%) there is clearly:

      i) variation in "Absorption" of the ROR concept;

      ii) variation in implicit decision criteria among judges;

      iii) variation in weights assigned to specific statutory standards among judges;

   b) The effects of different levels of "absorption", implicit criteria, and weights given to statutory standards among judges on potential increases in release rates depend on:

i) the degree of interrelation of the new (non-ct) factors;

ii) the level of relation between the new factors and the ct factors;

iii) the level of residual (individual-level) variation in release rates.

2. Assertion: By gathering information concerning such additional factors as risk of:

a) further offenses

b) interference with witnesses, and

c) custodial sentence, a bail agency can:

(1) dispel in some cases the need for pretrial custody, though the information would

(2) confirm the need for custody in other cases.

2. Researchable Topics:

A. It is obvious that the production of the new information must be analyzed in the following form:

	Custody Needed	Custody Not Needed
Non-Ct data available to court but not considered by Bail Agency	1.	2.
New Non-Ct data made available to court by Bail Agency	3.	4

The information in cells #1 and #2 could comprise the bail agency's "internal prediction" system. The information in cells #3 and #4 could form the basis for a controlled experiment, posing some risk of lowering release rates from pre-experimental levels. (4 3 > 4)

B. Again, the topic of inter-judge variability can be introduced, this time with particular importance for the design of the experiment involving production of new information.

3. Assertion: There are high levels of ignorance among judges, prosecutors, and police as to:

a) post-trial releases among detainess;

b) punitive remands;

c) over-prediction of future offenses

3. Researchable Topics:

An experiment to inform each judge of the consequences of his bail decision in terms of a) and c) above.

FROM DAN FREED'S AGENDA for the YALE/VERA SEMINAR ON "PTSAs"

I. Deficiencies in the current system

The pretrial criminal process is beset by a variety of problems, seen from many perspectives. The following list is illustrative.

A. Excessive pretrial detention

1. high numbers of persons detained
2. undue length of detention before trial
3. undue delay prior to pretrial release
4. high cost of detention

B. Oppressive conditions of pretrial detention

1. excessive security and poor physical facilities
2. denial of constitutional rights
3. worse treatment of and opportunities for accused detainees than convicted prisoners
4. inadequate system for compensating an accused for pretrial detention or other curtailment of pretrial liberty (i.e. credit awarded against jail sentence only)

C. Failures of released persons to appear as required (FTA)

1. high FTA rate accompanies large scale pretrial release
2. delayed or inadequate service of bench warrants against defaulters
3. underenforcement of laws against willful FTA

— few prosecutions
— concurrent sentences

D. Crime by released persons

1. high rate of arrests of released persons
2. inadequate authorization to detain or control high risk accused persons
3. aggravation of risk of crime on bail by trial delay

E. Excessive reliance on money bail

1. as unfairly detaining the poor

2. as unnecessary price of pretrial liberty

3. as ineffectively controlling persons with money

4. as creating undue dependency of the justice system on private bondsmen

F. Inadequate conception and application of pretrial process options

1. Fewer alternatives to extremes of unsupervised pretrial release and maximum security pretrial detention than in the postconviction sentencing system

2. Lower quality of information for pretrial decisions than for sentencing

3. Incomplete decisionmaking system, i.e. unlike sentencing, pretrial detention is usually the result of failure of the accused to make conditions of release rather than an explicit judicial decision to detain

4. Substantial excess, resulting from the above, of pretrial detention over postconviction detention

5. Incomplete system for the rectification of error, i.e. detention authorities, unlike correctional system, cannot parole the accused nor invoke alternatives to secure custody

G. Poor pretrial system management

1. inadequate coordination of pretrial options

a. of stages of release
b. of release to diversion
c. of detention to detention alternatives
d. of planning and budgeting for release and detention

2. inadequate review

a. delay and incomplete information in trial court bail review of individual cases
b. inefficient system review of detention population
c. absence of findings and reasoned decisions on which to base appellate review

3. inadequate information and feedback on pretrial process

   a. unsystematic compilation of court and agency statistics
   b. inadequate interchange among agencies

4. proliferation of pretrial agencies (release, diversion, detention) with separate information-gathering, screening, recommending and supervisory functions

II. Issues in Reform

Depending on one's view of the deficiencies in the process, and of the priority problems deserving attention, a wide variety of reform issues could be considered. The following are illustrative:

A. Should pretrial release be made mandatory in certain categories of cases, presumptive in others, and discretionary only in situations specifically defined by statute? How can categories of this type be developed so that they will actually be applied in practice? See ABA Standards on Pretrial Release.

B. Should subjective or objective standards (e.g. point systems) govern the personnel of agencies authorized to release arrested persons prior to court proceedings, and/or to make recommendations concerning release to judges?

C. Should each agency which possesses release or release recommendation responsibility be given responsibility to supervise and notify its releasees, and to arrest or otherwise secure their return to court in the event of noncompliance, or should all enforcement functions be consolidated in a single agency? Which agency?

D. Should a pretrial release and service agency be defense-oriented, prosecution-oriented or neutral? How does the resolution of this issue affect the placement of the function in a court agency, a defender office, a police department, a prosecutor's office, a probation department, an independent agency, or a private agency?

E. Should pretrial preventive detention be forbidden, or be authorized and controlled by statute? Should it include high crime risks? high flight risks? high risk of danger to evidence and witnesses? Should such a statute preclude detention on any grounds other than those specified? Should money bail be abolished or compensated sureties be outlawed?

F. How can an adequate theory and administrative framework be developed for reconciling the functions of pretrial release and pretrial detention? in terms of the rights of pretrial defendants? in terms of the governance of release programs and detention institutions? in terms of the flexibility needed to shift the status of an accused person between release, supervision and detention?

G. Should all types of pretrial diversion (employment, drug, alcohol, mental health, family counselling) be consolidated under a single pretrial agency? How can pretrial diversion be subordinated to release and dismissal so that it can be invoked only when these alternatives have been exhausted? What are the relative advantages, costs, and disadvantages of pretrial diversion vs. postconviction diversion? Should diversion be limited to convicted persons and consolidated with probation at the postconviction stage of the process?

H. Should information about release and diversion in individual pretrial cases be matters of public record or be kept confidential? What measures should be developed to protect an appropriate right of privacy of individuals, and at the same time promote agency accountability and facilitate independent research and evaluation of agency performance?

I. What is the appropriate allocation of pretrial functions between public and private agencies?

J. When all pretrial functions, options, costs and problems are considered

   1. to what extent should reform be directed to accommodating them in a more efficient process and administrative structure, and

   2. to what extent is the system too complex and the range of options counterproductive so that a simpler system would be preferable?

III. Statement of goals

An initial list of goals for the process might address the deficiencies currently encountered. For example:

A. Release. Maximize pretrial release, with effective controls where necessary to assure appearance and reduce crime.

B. Detention. Reduce to a minimum the number of persons detained and the length of detention; and humanize detention conditions, i.e. minimum deprivation of liberty and maximum opportunity for useful activity.

C. Money. Eliminate reliance on monetary conditions for persons who cannot afford them and for persons as to whom they provide inadequate assurance of return.

D. Decriminalization. Eliminate at the earliest stage those cases for which criminal prosecution is unnecessary or inappropriate.

E. Speedy Trial. Expedite the trial or other resolution of criminal charges.

F. Consistency. Rationalize pretrial options in relation to each other and to the postconviction process.

a. Extent of detention as measured by the total pretrial jail population (and flow) and the percentage of all pretrial defendants who are incarcerated

b. Extent to which pretrial detention is a result of an explicit decision or a receptacle for persons failing to make bail

c. Analysis of the duration of detention—i.e., what percentage of the pretrial detention population is detained full-time until disposition, and what portion is detained for some period ending with delayed pretrial release

d. Comparison of cost per defendant incarcerated against alternatives (average and marginal costs)

e. Analysis of the purpose of the detention, i.e. the extent to which persons are incarcerated pretrial (and to which such incarceration is necessary) (1) to ensure presence at trial or (2) to control anticipated criminal behavior

f. Exploration of possible variations from the traditional incarceration model, e.g.

(1) Pretrial work-release

(2) Furloughs

(3) Night/weekend incarceration

(4) Hostels or foster homes

g. Differences in required and actual treatment of pretrial and post-conviction prisoners

h. Effect of pretrial incarceration (1) on the outcome of the case and (2) upon sentencing (the imbalance ratio)

B. General factors affecting release decisions

1. Role of judges

a. Examination of judicial success in predicting failure to appear and commission of crimes while on release

b. Examination of the knowledge of judges concerning pretrial services and status decisions, e.g.

(1) How do decisions of various judges compare on pretrial release, in terms of percentage, criteria, outcome, etc.

(2) Individual success in predicting failures to appear and rearrest

(3) Extent to which persons granted bail make bail

(4) Extent of imbalance between pretrial detention and post-trial release

c. Effect of presumptions for or against release in particular categories

d. Effect of the availability of "credit for time served" on the release decision

e. Possibility and effect of a requirement that in order to permit pretrial detention, a written record of judicial intent to detain must be filed

f. Examination of judicial intent in bail decisions--i.e. in setting bail for certain crimes and at certain levels, to what extent do judges intend incarceration or conditioned release?

g. Extent to which judges take potential danger to the community into account in setting bail

h. Examination of what, in the view of judges, best deters failures to appear (e.g. money deposits, community ties, notifications concerning court dates, personal supervision, fear of subsequent prosecution)

i. Effect of recommendations of the prosecutor, Department of Probation, PTSA, defense attorneys, and others on release decisions

j. Effect of bail-jumping statute enforcement or non-enforcement on release decisions

k. Analysis of factors that induce judges to alter initial decisions denying ROR

2. Role of the Prosecution

Analysis of the degree of influence on judges of the prosecutor's bail recommendations and of setting the initial charge (including the effect and extent of overcharging)

3. Other factors

a. Analysis of the sequence in which alternate forms of release are currently considered and how this might affect status decisions, e.g. bail bond prior to ROR as pre-empting ROR

b. Examination of the possibility and effect of a preventive detention statute which provided the sole basis for pretrial detention

c. Analysis of the effect of eliminating money bail