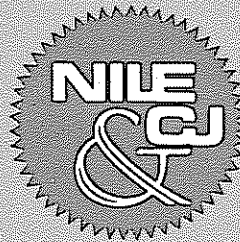


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# The Bronx Sentencing Project of the Vera Institute of Justice

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## An Experiment in the Use of Short-Form Presentence Reports for Adult Misdemeanants

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## *PREFACE*

The material contained in this report comes from two sources: first, the Research Report on the Bronx Sentencing project submitted to the National Institute of Law Enforcement and Criminal Justice (grant #NI-036) in August, 1970, covering the project's operations from July, 1968, through February, 1969; and second, project records for the period after February, 1969. The authors gratefully acknowledge the in-

valuable contributions of Gerald M. Shattuck, Professor of Sociology, Fordham University, who served as research director under the National Institute grant and assisted in the preparation of this report, Thomas S. Chittenden, Director, Management Planning Unit, New York State Judicial Conference, who served as the Project's first director, and Rose Marie Occhino, who painstakingly typed the entire manuscript.



## SUMMARY

### Project Purpose

This report describes an experiment with short form presentence reports for adult misdemeanants conducted by the Vera Institute of Justice in the Bronx Criminal Court. Under New York law, a sentence of probation or conditional discharge may be made only if the judge takes into account not only the nature of the crime but also the "history, character and condition of the defendant." This latter stipulation usually required submission of a report by the Office of Probation. Because of the heavy caseload of the Office of Probation and the length of time required for a probation officer to write a full report, however, the court was able to refer less than 20 percent of the misdemeanor cases to the Office of Probation for a presentence investigation. This, in effect, meant that, under the law, nonprison sentences involving supervised release and conditional discharge could not even be considered in the remaining 80 percent of the misdemeanor cases.

The Vera project was established to fill the need for a presentence report which: (1) would contain information most often used by judges in determining sentence and; (2) could be prepared within a relatively short period of time. By using such a report, judges would be able to extend the opportunity for a nonprison sentence to the many misdemeanants who, because of heavy Office of Probation caseloads, were not otherwise able to receive a presentence report. The purpose of the short form presentence reports, however, was not specifically to alter existing sentencing patterns, but rather to inform the court of the various characteristics of the defendant which judges usually consider to be most relevant in making sentencing decisions.

### Development of Report Form

The first major task in developing the short report form was identification of those factors which should be included, that is, items which judges usually used

as a basis for decisions. Extensive interviews were conducted with judges, and an 86 case sample of probation reports was analyzed to identify factors which appeared to correlate with nonprison sentence.

This analysis suggested that judges had placed reliance on three factors: prior criminal record, employment, and family relationships. An interview report form was then devised to cover the significant data in these three areas. A weighted scoring system was drawn up to approximate the actual weight these factors had received in previously sentenced cases. This scoring technique was then tested by applying it to a sample of cases for which Probation Office reports had been submitted, to see how well it could predict the actual sentences handed down. The result of this test was that the same type of recommendation (prison or nonprison) was made in nine cases out of ten, and that a correct prediction of the specific sentence was made in approximately seven cases out of 10. This weighted scoring system was then adopted by the project as the basic tool for deciding the sentence recommendation it would make to the court.

### Results and Findings

*Correlation between recommendation and sentence.* Throughout the project, staff members received a high level of cooperation from all agencies in the criminal justice system, and the Vera sentencing system rapidly gained the confidence of the court's judges. There was a high rate of agreement between the sentencing recommendations made in the project reports and the actual sentences handed down. In the first 8 months of project operation, nonprison sentences were meted out in 83 percent of the cases in which the project recommended such a sentence. Prison sentences were ordered in 87 percent of the cases in which the project was unable to recommend a nonprison sentence. (Over the course of the project, the withholding of a nonprison recommendation became tantamount to a prison recommendation.) The overall rate of agreement be-



tween the project's recommendation and actual sentence during the study period was 86 percent.

*Intervening factors.* A rather disturbing finding of the project was the discovery of the almost overriding effect of two factors which were closely tied with the economic status of the offender. These were: 1) Type of counsel (private counsel or Legal Aid Society), and; 2) Detention status of offender on the day of sentencing.

In cases where Vera withheld a nonprison recommendation, a prison sentence was imposed 95 percent of the time when the offender was represented by Legal Aid, but only 54 percent of the time when the offender had private counsel.

The second significant variable was whether or not the offender was in custody on the day of sentencing. Recommendations for nonprison sentences were accepted by the court in 90 percent of the noncustody cases, but in only 68 percent of the custody cases. Conversely, "prison recommendations" were followed in 95 percent of the custody cases, but in only 66 percent of the noncustody cases.

*Recidivism.* One purpose of the project was to see if use of the short form would result in a higher rate of recidivism. For research purposes, recidivism was defined as at least one rearrest for a felony or serious misdemeanor during the first 6 months of time-at-risk. Followup reports on those released after a project recommendation of a nonprison sentence showed a recidivism rate comparable to that for offenders receiving nonprison sentences but for whom no presentence reports had been prepared. The rearrest rate for project cases was 18 percent compared with 16 percent for cases with no presentence report.

*Supervised release.* During the second half of 1969, instead of recommending cases qualifying for supervised release to the already overburdened Office of Pro-

bation, the project began to recommend supervision cases to Volunteer Opportunities, Inc. (VOI), a community counseling program. This program offered offenders such services as group counseling; individual counseling; and referrals for housing, health, employment, and job training.

The project also enlisted the services of a narcotics coordinator to assist those seeking to overcome a drug problem. He was a former drug user who would determine the extent of a defendant's drug problem and recommend an appropriate treatment program.

## Conclusions

The most obvious effect of this project was the enlargement of the class of defendants receiving presentence reports. Prior to the project, misdemeanants receiving presentence reports were primarily first offenders or others whom the court deemed likely to qualify for probation. More than half of the offenders who were referred to the Probation Office for presentence reports had no prior arrests and 80 percent had no prior convictions. With the advent of the Vera project, many defendants, especially those with prior records who probably otherwise would have been imprisoned because they had not received a presentence report, were able to be granted supervised or unsupervised release.

In October 1971, the Bronx Sentencing Project terminated operations. Shortly thereafter, a new Criminal Procedure Law permitting short form presentence reports for misdemeanor cases went into effect in New York State. A "Short Form Pre-Sentence Report" similar in content to the one used by the project was designed by the State Division of Probation for use in courts throughout New York State. Preliminary indications are that the new short form report produces results comparable to results of the Vera project in the Bronx Criminal Court.

## I. INTRODUCTION

In theory, there are several alternatives open to a New York judge in the sentencing of a misdemeanor. He may choose an unconditional discharge, a conditional discharge, probation, a fine or imprisonment.<sup>1</sup> In practice, however, much of the sentencing flexibility built into the statute is unused. Most adults convicted of serious misdemeanors are either released back to the community without supervision or imprisoned.

Sentences of probation and conditional discharge are only available if the judge first considers "the nature and circumstances of the crime and . . . the history, character and condition of the defendant."<sup>2</sup> Since the Office of Probation is able to investigate only a small percentage of the adult<sup>3</sup> misdemeanor cases in the New York City Criminal Court, more than 80 percent of these persons theoretically become ineligible for sentences of probation and conditional discharge. In practice, however, judges often sentence a defendant to a conditional discharge without having the requisite information available for consideration.

Without a presentence report to assist the judge, sentences are imposed solely on the basis of the circumstances of the offense of conviction and a criminal record which often contains only a list of prior arrests with no indication of dispositions. Moreover, since the judge who imposes sentence is rarely the one before whom a trial has been held or a plea of guilty entered,<sup>4</sup> mitigating or special circumstances often do not affect the sentencing decision.

The choice between the remaining nonprison alternatives and a prison term is often difficult. A fine or an unconditional discharge offers neither supervision of the defendant in the community nor assistance in obtaining schooling, training or employment. Prison, while precluding further criminal activity for a period up to a year, has been of dubious rehabilitative value. Faced with the choice, however, most judges choose incarceration except where the defendant, on the basis of little information, is considered a good risk to refrain from further criminal behavior.

In 1967, the President's Commission on Law Enforcement and Administration of Justice pointed out the general absence of presentence reports for misdemeanants,<sup>5</sup> and suggested that this contributed to the unwillingness of judges, in many cases, to consider alternatives to imprisonment.<sup>6</sup> Lack of information was also found to be "a major cause for irrational sentencing," since, in most misdemeanor cases, "the judge's exposure to a defendant is far too cursory to give an adequate impression of his character and background for determination of the best correctional treatment for him."<sup>7</sup> Yet, even if sufficient numbers of probation officers were available, the Commission doubted whether the traditional presentence report would be appropriate for all misdemeanants. It suggested that the information gaps in misdemeanor sentencing be filled by gathering, verifying and presenting certain objective data which appear to be important to sentencing.<sup>8</sup>

The Vera Institute of Justice's Bronx Sentencing Project was a response to the Commission's recommendation that experimentation with the use of short-form presentence reports take place in high volume misdemeanor courts. Between July, 1968, and October, 1971, the project prepared such reports in adult arrest cases in the Bronx Criminal Court where a full presentence investigation by the Office of Probation was not ordered.

The objective of the project was to demonstrate that a relatively small staff could produce useful, reliable presentence reports within a short period after conviction. The project's staff originally consisted of two persons who conducted 30-minute interviews with convicted misdemeanants. They used a structured interview questionnaire, and verified the information by telephone, through relatives in court and by reference to court records. The one-page report was then prepared which listed the information and contained a sentence recommendation based on a system of numerically weighting various social characteristics of the defendant.

In submitting its report, the project sought to inform sentencing decisions rather than to alter, in any pre-

conceived manner, existing sentencing patterns. It was expected, however, that if more information were presented to the court at sentencing, the percentage of defendants sentenced to prison would decrease. In addition, it was hoped that any increase in nonprison dispositions as a result of the project's recommendations would not result in any increase in the rate of recidivism.

The project progressed through various stages. Initially, it concentrated on establishing the credibility of its report as a useful tool in the sentencing process. As

it achieved increasing acceptance, the project began to focus more heavily on a capacity to refer defendants to appropriate community-based services. Thus, while there was a small impact on sentencing patterns during the first year, this impact increased significantly during the second and third years with the growth of the referral system.

The purpose of this report is to describe the operations and results of the Bronx Sentencing Project in the hope that what has been learned can be put to constructive use in other jurisdictions.

## II. THE OPERATION OF THE PROJECT

### A. Establishment

The Bronx Sentencing Project was designed to operate in an existing system of criminal justice administration consisting of many agencies. The continuous support of these agencies was a *sine qua non* to the establishment and operation of the project. The Office of Probation played a significant role in the design of the project by furnishing project planners with sample copies of its own presentence reports to permit an analysis of the relationship between sentencing patterns and the defendant's background characteristics. Discussions were held with the judges of the Bronx Criminal Court in order to determine the factors which they deemed relevant to sentencing and, therefore, important for a presentence report. The Administrative Judge gave the project permission to operate in the Bronx Criminal Court and provided it with office space in the courthouse. The Chief Clerk granted it access to all relevant court records. The Legal Aid Society, which represents the overwhelming majority of defendants in the court, gave the project permission to interview any of its clients for the purpose of preparing a presentence report. The Department of Correction granted access to its facilities and institutions for interviewing detained defendants and, in addition, provided the project with valuable information for research purposes. The Police Department—especially its Bureau of Criminal Identification (BCI)—continuously provided criminal record information on all defendants for purposes of preparing both presentence reports and followup studies of recidivism. The Mayor's Criminal Justice Coordinating Council sponsored the project, provided funding and facilitated coordination with the many agencies and persons involved in the criminal justice system.

### B. Intake

The Bronx Criminal Court is one of five separate county<sup>9</sup> courts which constitute the New York City Criminal Court. The work of the court is divided into

various categories: adult arrests, youth arrests, citizen-against-citizen summonses, municipal department summonses and traffic cases. As of July 1, 1970, almost all traffic cases were transferred from the jurisdiction of the Criminal Court to administrative agencies.

The Criminal Court's volume is overwhelming and rapidly increasing. For 1969, it reported 442,840 non-traffic felony, misdemeanor and summary offense arraignments, an increase of 91,163 over 1968. Approximately 75,000 of these cases were arraigned in the Bronx. For 1970, the number exceeded 85,000. The breakdown of these cases is as follows: adult arrests, 33,072; youth arrests, 11,866; and summary offenses, 40,633, for a total of 85,571 cases. Of the 33,072 adult arrest cases, only 6,070 resulted in conviction.

On a "normal day," the Bronx Criminal Court has at least 700 nontraffic cases scheduled for post-arraignment action. In "arrest" cases, the court's jurisdiction is complete with respect to all misdemeanors and violations, and it may conduct preliminary hearings and motions in felony cases. If a felony is reduced to a misdemeanor or violation, it remains in the Criminal Court; if not, it is transferred to Bronx Supreme Court to await action by the Grand Jury. If the Grand Jury refuses to indict, the case may be dismissed or returned to the Criminal Court as a misdemeanor. Whenever a defendant is convicted of a misdemeanor, sentencing may occur: (1) immediately, if the defendant waives his right to a 2-day adjournment between conviction and sentence<sup>10</sup> ("waiver case"); (2) after an adjournment, to enable the Office of Probation to conduct a court-ordered presentence investigation (investigation and Sentence case or Office of Probation case); or (3) after an adjournment ordered solely for the purpose of receiving updated criminal record information (Record and Sentence or "R&S case"). Traditionally, Record and Sentence cases did not require a presentence investigation and report. The defendant was sentenced solely on the basis of available criminal record information, the circumstances of the offense and any statements on his behalf made by the defense attorney. In 1970, 4,111 of the 6,070 adult arrest convictions fell

within the project's general eligibility criteria (discussed below in Section C). Of these, 2,128 (51.8%) were waiver cases, 1,028 (25.0%) were probation cases and 955 (23.2%) were Record and Sentence (R&S) cases.

Originally, the project attempted to service waiver and R&S cases in the adult arrest parts of the court. The project made no attempt to operate in the youth parts of the court since the Office of Probation was receiving requests to conduct presentence investigations in a large percentage of the cases convicted in these parts. The advent of the project's referral system, however, made it impossible to complete cases on the same day as conviction, thereby compelling an end to the acceptance of waiver cases. Since that time, the project attempted to dissuade Legal Aid attorneys from waiving the right to an adjournment between conviction and sentencing, since research disclosed that project presentence reports tend to benefit defendants in Legal Aid cases. This effort was not altogether successful because of Legal Aid's enormous caseload, defendants' frequent requests "to be sentenced right away and get it over with," and the fact that a reduction of the charge often can be obtained by defense counsel only in return for the defendant's agreement to plead guilty *and* to accept a particular prison sentence. In the latter case, a waiver is often the defendant's best course of action. If the charge is a felony and is not reduced, the defendant exposes himself to the possibility of an indictment and a longer prison sentence if convicted of a felony. In addition to waiver cases, the project did not handle Office of Probation cases since they represent judicial requests to that office to conduct a presentence investigation.

Thus, it was from the pool of Record and Sentence cases that the project drew its workload. It should be noted that the method by which the project obtained its cases differed from that of the Office of Probation. Probation works on a case only when the court has specifically requested it do so. The project gratuitously conducted interviews and submitted presentence reports in all R&S cases which fell within its eligibility criteria and also whenever a judge specifically requested a "Vera Report," irrespective of eligibility criteria. (The chart on pages 6 and 7 outlines the steps taken to process offenders through the project.)

All convicted defendants whose cases were adjourned prior to sentencing were fingerprinted in the courthouse for purposes of identification and also to trigger the provision of a criminal record by the Police Department for sentencing purposes. The project, therefore, successfully negotiated for an office adjacent to the fingerprint room. This served to eliminate countless problems of physically locating eligible defendants. The importance of the project's proximity to a place through which all eligible defendants pass cannot be overemphasized. After being fingerprinted, all appar-

ently eligible defendants were brought to the project's office by a court officer or police officer. There a staff member determined their eligibility and conducted the "identification" process.

### C. Eligibility

When the project began, the adult arrest parts of the Bronx Criminal Court had two sets of docket numbers (A and B) divided roughly as follows:

A Docket: Arrests for all felonies and those misdemeanors requiring fingerprinting before bail may be set;

B Docket: Arrests for misdemeanors not requiring fingerprinting before bail may be set and for all violations.

A decision was made to interview all "A Docket" defendants who had been convicted of a misdemeanor specified in the New York Penal Law (except gambling and prostitution), since the chances of their receiving a prison sentence were comparatively high. Convictions for other misdemeanors, such as those found in the Vehicle and Traffic Law, Alcoholic Beverage Control Law, Labor Law, etc., were excluded since they rarely resulted in prison sentences.

In July, 1970, the Bronx Criminal Court changed its system of docketing as follows:

A Docket: All felony arrests;

B Docket: All misdemeanor and violation arrests.

Thereafter the project began to handle all penal law misdemeanor convictions, with the continued exception of gambling and prostitution, regardless of the offense for which the defendant was arrested. This was done to avoid an unnecessary complication of the project's intake procedure, and as an attempt to increase the project's caseload.

Under the New York Mental Hygiene Law (MHL), Article 9, if a defendant has been arrested for certain drug offenses or if he shows signs of being a narcotic addict, the judge is required to order a medical examination to determine whether he is an addict as defined by MHL § 201. If the defendant has been found to be an addict, and is convicted of a misdemeanor, the judge is required to commit him to the custody of the Narcotic Addiction Control Commission for a period not to exceed 36 months; and up to 60 months at the court's discretion if the defendant has been convicted of a felony. MHL § 208. Since there is no discretion with respect to sentencing, the project normally did not handle such cases.

The process of having a defendant committed to the custody of the NACC is a lengthy one which involves many steps. Normally, when a police officer arrests a defendant whom he has reason to believe is or may be a narcotic addict, he completes a form entitled

"Statement of Possible Narcotic Addiction." This usually results in the arraignment judge ordering the defendant to be examined by an NACC doctor who forwards a report to the court. If the defendant is found not to be an addict, then nothing further is done concerning the issue of addiction. If the defendant is found to be an addict, he can request a hearing on the issue of addiction. If he does not contest the finding of addiction and is thereafter convicted, he will be sentenced under the Mental Hygiene Law. The District Attorney has the power to waive any addiction hearing which then results in the cancellation of the defendant's status as an "addict." If convicted of any crime, he would then be sentenced under the Penal Law rather than the Mental Hygiene Law.

The project's final criteria for accepting a case may be summarized as follows:

- Any Penal Law misdemeanor conviction, except one involving gambling or prostitution, in one of the adult arrest parts of the court;
- Adjournment for Record and Sentencing (R&S);
- No final determination that the defendant is an addict within the meaning of the Mental Hygiene Law.

#### D. Identification

The term "identification" refers to the process by which the project recorded initial information regarding cases which fell within its eligibility criteria. Several forms and documents were employed by the project in identifying a case. They are presented in the Appendixes of this report.

1. *Orientation.* When the defendant was brought to the project's office after having been fingerprinted, a staff member explained the nature and purpose of the project, obtained the defendant's consent to be interviewed, and gave him a one-page description of the project (Appendix A).

2. *Custody status.* It was then necessary to ascertain whether the defendant had been remanded to custody or was free on bail or personal recognizance. Originally an attempt was made to interview all defendants immediately after identification. However, for defendants in custody, this meant that the arresting police officer—the one who normally has custody of the defendant within the court building—was required to await completion of the interview (30–40 minutes) before returning the defendant to the court holding cells to await transportation to a detention institution.

Most defendants who are in custody (males 21 years and older) with cases pending in the Bronx Criminal Court are detained at the Bronx House of Detention, located less than a mile from the courthouse. It proved easier to conduct interviews there than

in the court holding cells immediately after conviction. In order to prevent the transfer of these defendants to other detention institutions, the project stamped "VERA REPORT" on the Commitment Order which accompanies them back to the institution. Prior to implementing this procedure, the interviewers often discovered that one or more potential interviewees had been transferred to another institution due to overcrowding at the Bronx House.

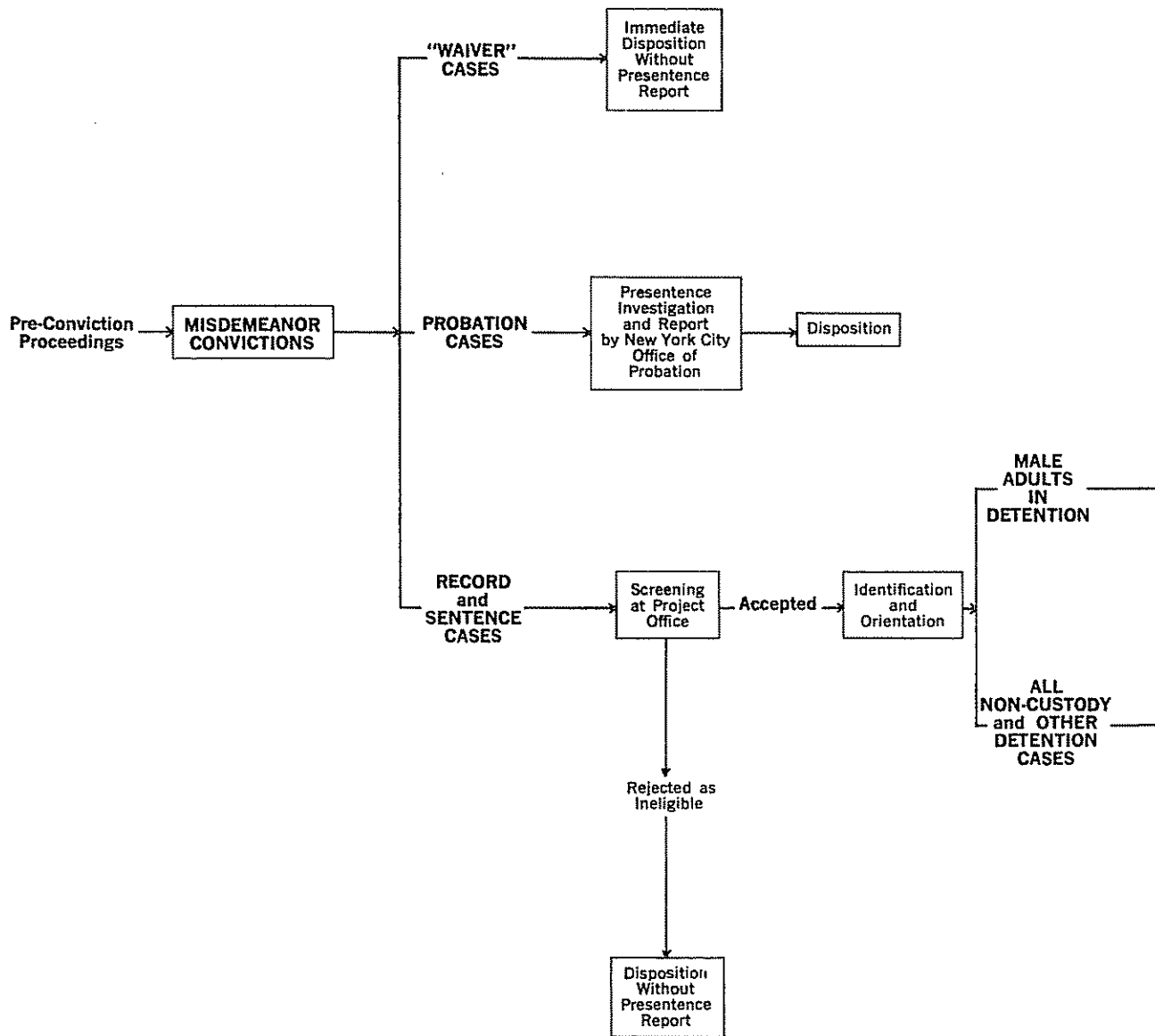
Other detained defendants (males under 21 years and females) comprised a very small percentage of the eligible caseload and were interviewed in the courthouse since they were housed too far from the project's office and were too few in number to warrant a visit to the institution. Through the cooperation of the police unit assigned to the courthouse, a house officer took custody of those defendants who had to be interviewed in the project's offices. The arresting officer was then free to return to his tour of duty. House officers escort defendants from the detention cells to the courtroom when the arresting officer is not present in court. There are several reasons why an arresting officer is not always present for a scheduled court appearance: (1) he has been excused from appearing at the prior court appearance; (2) failure to receive notification to appear after missing a prior court appearance; (3) inability to appear because of sickness, incapacity or conflicting court appearance elsewhere; and (4) unexcused absence.

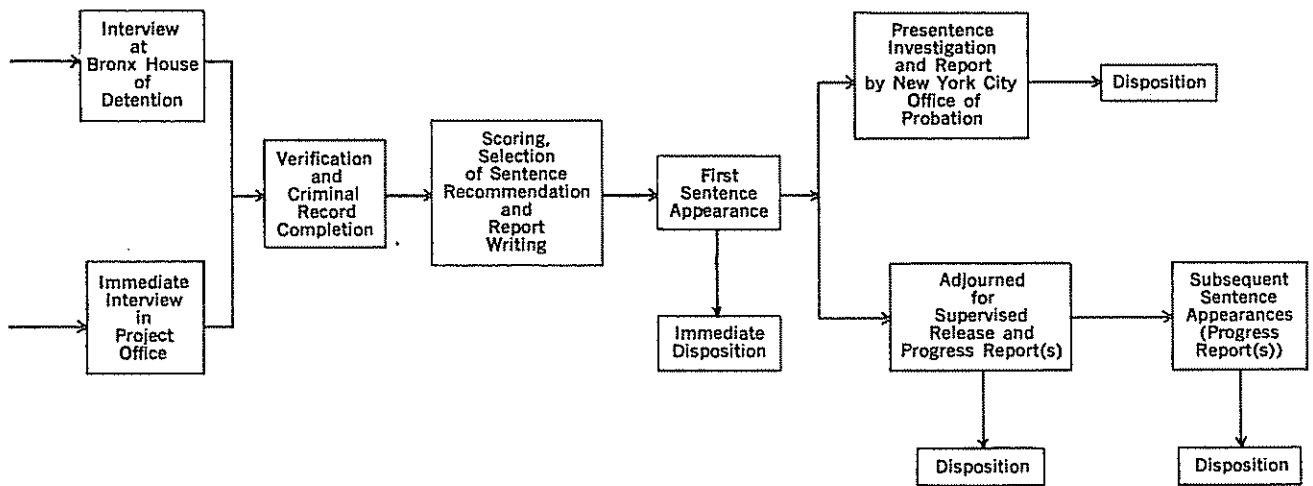
When it was not possible to interview this special category of detained defendants on the day they were convicted—usually because it was too late in the day—their names were listed on a Recall Sheet (Appendix D). This sheet, signed by a court clerk and forwarded to the Department of Correction, requested that these defendants be produced the following day for an interview by the project. No formal court appearances were made. Prior to the institution of this procedure, it was necessary to make two court appearances in order to have these defendants brought back to the courthouse for an interview—one to make application to the court to advance the case to an earlier date for an interview, and a second to have the case readjusted to the original sentencing date.

Defendants not in custody were usually interviewed immediately after identification. Experience showed that if an appointment was made for an interview at a later date, many defendants failed to return to the project's office until their next scheduled court appearance. This necessitated another adjournment if an interview was to be conducted and a report submitted. For those defendants who were employed, a deferred interview date meant another missed workday—something to be avoided if at all possible.

3. *Court papers.* All of the identifying information about the defendant is contained in the court papers, which comprise the entire record of the proceedings.

# The Flow of Misdemeanor Cases Through the Bronx Sentencing Project







When the defendant was brought to the project's office, the escorting officer brought the court papers with him, and he was given a receipt which he returned to the appropriate court clerk. A staff member stamped "VERA REPORT" on the front of the court papers. After the case was identified and the data coded by the research staff, the papers were returned to the clerk's office, and the receipt was retrieved. In order to be able to record the necessary information about each case, it was extremely important to have permission to retain court papers for a few days.

When the process of identification was completed, an identifying data sheet (Appendix E) and copies of the arraignment yellow sheet and complaint were placed in a case jacket (Appendix F). The case was then ready to be interviewed. The number of cases identified varied from week to week, due to changes in the number of cases disposed of by the court. During 1970, the project identified 955 cases, a weekly average of 18.4.

### E. Interviewing

As indicated previously, the time and place of interview is determined by the defendant's custody status, sex and age. A normal interview lasts approximately 30-40 minutes. The questionnaire (Appendix G) was structured to permit all relevant information to be elicited in this period of time. The interviewer explained to the defendant that the purpose of the interview was to provide the judge with verified information regarding his family ties, residence, employment and prior criminal record, so that his sentence would not be based solely on the current offense and an incomplete prior criminal record. He also informed the defendant that his statements would be verified and that the dispositions of his prior arrests would be obtained if they were missing on his criminal record. The interviewer stressed that the project sought to bring out the positive elements in the defendant's social history with a view toward recommending a nonprison sentence or minimizing the length of any prison sentence.

Project contact with the defendant usually occurred after he had had a long and drawn out exposure to the criminal justice system. Due to the great volume of cases in the Criminal Court, there is a tendency on the part of many court-related personnel to process papers rather than to deal with human beings, and project personnel often found a deep sense of frustration among defendants toward the close of their cases. Accordingly, it was important to convey a feeling to the defendant that the project sought to help him. The interviewers explained the possible sentences to him and indicated which one he was likely to receive, provided all relevant interview information could be verified. At the completion of the interview, the process of verification began.

### F. Verification

This function is crucial, since it is on the basis of verified information about the defendant that sentence recommendations are made. Information is verified in four ways:

1. *Telephone.* In most cases, it was possible to speak with a person who was familiar with the defendant's family ties and residence. Usually employment could also be verified by telephone. If the defendant's employer knew that he had been arrested, then the purpose of the call could be stated. However, when the defendant did not want his employer to know that he had been arrested, the interviewer would normally state that he was calling to make a credit check on the defendant.

2. *Friends or relatives in court.* Friends or relatives of the defendant often appeared in court with him and usually accompanied him to the project's office. They often verified the defendant's statements immediately after the interview.

3. *Mail.* Sometimes employers were reluctant to disclose information about the defendant over the phone. In such cases, a form letter was sent requesting verification of employment information.

4. *Field verification.* When it was not possible to effectuate verification by the first three methods, a field verifier visited the home of the defendant, a friend or relative and/or places of employment. In addition, before a defendant could be recommended for a sentence involving supervised release, a field verified residence had to be established for him. The field verifier had to have a thorough knowledge of the court's geographical jurisdiction and an ability both to gain access to the homes of those he would be visiting and to obtain the requisite information. In addition, he had to be able to determine whether a person was being truthful. A knowledge of Spanish was extremely valuable, although it was possible to complete a field verification by using a bilingual neighbor. Since the number of field verifications was not sufficient to require a full-time staff person, the project had considerable difficulty in keeping this position filled. Experience indicated that ex-offenders who were of average intelligence and were otherwise apparently "making it" in the outside world were best qualified to do the job. The problem was that they had to have another part-time job in order to earn a decent living. The project's best field verifier was someone who was also employed during the evening as a counseling group leader by Volunteer Opportunities, Inc.—the community counseling program to which the project referred many defendants.

## G. Criminal Record Completion

Most criminal records (Yellow Sheets) in New York City list prior arrests, but only occasionally contain final dispositions. Since judges rely heavily on these records in sentencing a defendant, the project tried to obtain all missing dispositions to prevent the automatic equating of arrest with conviction.

In New York City, two Yellow Sheets are usually generated for persons convicted of a crime—one prior to arraignment and one prior to sentencing. The latter, referred to as an Up-dated Yellow Sheet (UYS), contains any information obtained from State and Federal authorities since the time that the defendant was fingerprinted prior to arraignment. The project arranged with the Police Department's BCI to receive a copy of the UYS for all cases which it had identified. Interviewers searched the records in the Bronx Criminal Court clerk's office to obtain dispositions for all previous Bronx arrests. Dispositions for previous felony arrests which had not been reduced to misdemeanors were obtained from the clerk's office in Bronx Supreme Court, which is a short distance away. If a personal investigation was not possible, the information could usually be obtained by telephone or by mail. Dispositions of non-Bronx arrests within New York City were obtained by telephone from various court personnel or from staff members of other projects operated by Vera.

When it was not possible to obtain dispositions by telephone, a worksheet accompanied by a covering letter requesting the information was used. This occurred most often in the case of non-New York City arrests. Since the project was not an official arm of the court and was not widely known outside New York City, there was a reluctance to disclose criminal-record information over the phone. Most written requests, however, were honored within a few days.

In New York City, and probably in most large cities, the records of the local criminal court are the best source of information for obtaining dispositions of prior arrests. In rural areas, the project had much greater success in communicating with the arresting agency—local police department, county sheriff's office or state police—than with the court, since the name of the arresting agency always appears on the defendant's prior record, whereas the name of the court does not. After the interviewer obtained all possible information concerning the defendant's prior record, he entered it on the project copy of the UYS, which was attached to the presentence report. In addition, Xerox copies of each UYS were given to the officer in the fingerprint room who forwarded them to BCI for completion of the latter's records.

## H. Scoring a Case and Choosing a Sentence Recommendation

Using an adaptation of the approach developed by Vera in the Manhattan Bail Project and the Manhattan Summons Project, a scoring table was devised in April, 1968, for purposes of arriving at a sentence recommendation. The table assigned a numerical value to items of information about a defendant's employment, residence and family ties, his prior criminal record and the circumstances of the present offense. The table was constructed on the basis of positive and negative factors which appeared to influence sentencing judges most strongly when an Office of Probation presentence report had been submitted. The table did not purport to provide a scientific formula for predicting recidivism; it only gave the sentencing judge some guidance as to the kind of defendants other judges had placed on probation or discharged (unconditionally or conditionally) when presentence information had been present.

An 86-case sample of probation reports was analyzed to identify which factors were significantly associated with a nonprison sentence. No attempt was made to predict when a fine would be levied, and the few cases in which the disposition was a fine were not included in the 86-case sample because there was no clear pattern which permitted reliable categorization by means of a point scale. In general, this analysis suggested primary reliance on prior record, employment and family relationships. Other factors tested, such as education; psychological or medical factors, and military record; either appeared to be insignificant or did not appear often enough to permit an assessment. A weighted scoring system was then devised, and the sentencing recommendations generated by the system were compared with the recommendations of the Office of Probation and the sentences imposed by the courts. In allocating Office of Probation recommendations and actual sentences, "conditional discharge" was treated as "probation" if there was an indication from the report that a specific condition recognizing the need for community supervision was imposed. Otherwise, the allocation was to "unconditional discharge." The results were as follows:

Table 2-1

	Vera recom- mendation	Office of pro- bation recom- mendation	Court sentence
	Percent (No.)	Percent (No.)	Percent (No.)
Unconditional discharge.....	34 (29)	33 (28)	27 (23)
Probation.....	51 (44)	51 (44)	51 (44)
No recommendation (prison).....	15 (13)	16 (14)	22 (19)
Total.....	100 (86)	100 (86)	100 (86)

Next, for each sentence category, the extent of the court's agreement with Vera's recommendations was compared with the court's agreement with the Office of Probation recommendations:

Table 2-2

	Sentence recommended	Recommended sentence accepted by court	Acceptance rate (percent)
Unconditional Discharge			
Vera.....	29	20	69
Office of Probation.....	28	22	78
Probation			
Vera.....	44	33	75
Office of Probation.....	44	39	88
Prison			
Vera.....	*13	11	85
Office of Probation.....	14	11	79

\*In these cases, the defendant's point scores were not sufficient for a non-prison recommendation.

Finally, the table was collapsed to determine the extent of court agreement with all *nonprison* recommendations. Here, the rate of agreement with Vera's hypothetical recommendations equalled the actual rate achieved by the Office of Probation.

Table 2-3

	Nonprison sentence recommended	Nonprison sentence recommendation accepted by court	Acceptance rate (percent)
Vera.....	73	67	91.8
Probation.....	72	66	91.7

The scoring table, when applied to a sample of cases in which Probation reports had been submitted, agreed with actual sentencing decisions in approximately seven cases out of ten, and agreed with nonprison sentences in approximately nine cases out of 10. The table thus represented a reliable guide to the sentence a defendant would have been likely to receive based upon a full probation report.

The sentencing guidelines which were in use at the time the project was terminated (Appendix H) contained modifications based upon 2½ years of practical experience in the Bronx Criminal Court, as well as on the results of research conducted under a grant from the National Institute of Law Enforcement and Criminal Justice on the project's first 8 months of operation. The results of the research are discussed in Part III. When the interviewer completed verification of all relevant facts, a score was computed from the recommendation guidelines. When the interviewer exercised discretion as authorized by the guidelines,

the reasons for doing so were indicated in the case file for future analysis of the guidelines. If the interviewer wished to deviate from the guidelines because of unusual or extenuating circumstances, a conference was held with the project director to obtain approval.

It should be stressed that the guidelines were originally designed to reflect the sentence that a consensus of the New York City Criminal Court judges would mete out if verified social history and criminal record information were presented to them. The conditions that obtain in New York City may be significantly different from those in other jurisdictions; so that identical cases might receive one sentence from a consensus of New York City's Criminal Court judges and a totally different one from a consensus of another jurisdiction's judges. Thus, an attempt to apply the Bronx Sentencing project's guidelines in another jurisdiction, without prior research into sentencing patterns there, might have unsatisfactory results.

## I. Supervised Release—A New Kind of Disposition

Depending upon how the defendant scored after applying the recommendation guidelines, one of three categories of recommendations was made: (1) unsupervised release; (2) supervised release; (3) for information only. This section deals only with those cases which scored for a supervised release. A complete discussion of all sentence recommendations is contained in the section entitled "Final Sentencing."

The original sentencing guidelines contemplated two types of supervised nonprison dispositions—specific conditional discharge to a treatment program and probation. Such sentencing alternatives were expected to provide supervisory and substantive services to defendants as conditions of a nonprison sentence. Several problems emerged. First, cases placed on probation on the project's recommendation were generally more difficult than those placed on probation in conjunction with a probation report (especially in terms of prior record), and the Office of Probation reported a general lack of success with them. Second, evaluation of the specific conditional discharge cases was rather difficult because of the relatively small numbers referred to any one agency and the agencies' erratic performances in providing promised reports. Third, the sanction of resentencing, theoretically available against defendants violating the terms of their release, was rarely invoked where the defendant had not committed an additional crime.

During the second half of 1969, several changes were made in an attempt to overcome some of these difficulties. Instead of probation, the project began to recommend referral of cases qualifying for a supervised release to Volunteer Opportunities, Inc. (VOI), for participation in its community counseling program,

and to other community-based service-providing agencies. Thereafter, a narcotics coordinator was hired to facilitate placement of addicted offenders in both residential and nonresidential treatment programs. Simultaneously, an important procedural change was made. Instead of recommending a sentence of specific conditional discharge for referral cases, the project began requesting that such cases be adjourned for periods ranging from 1 to 6 months. During that time, the defendant would participate in the program of the referral agency. Thus, an offender would have to face the prospect of eventual sentencing in an open case on a specified date, rather than the mere possibility of resentencing in a closed case for a violation of the conditions of the referral.

During late 1969 and early 1970, the inadequacies of various community-based organizations led the project to concentrate primarily on referrals to VOI, whose program and management were found markedly superior. In addition, it was felt that, to evaluate the project's referral process, a significant number of offenders had to be placed in a single program which was receptive to the idea of detailed analysis and able to provide the necessary data on an offender's participation. The VOI program included: group counseling; individual counseling; housing, health, employment and training referrals; tutoring; and recreational programs. Group counseling was led by trained paraprofessionals who had been involved for many years in the subculture of crime, drugs, and poverty and were able to serve as role models for the offenders.

When a defendant scored for a supervised release, the VOI program was explained to him. He was then offered the opportunity to participate, subject to the results of the verification process, the consent of the court and counsel, and the approval of VOI. If he was out on bail or personal recognizance pending sentence, he could immediately enter the program on a two-way trial basis as a "temporary" enrollee. On the sentencing date, qualified offenders were recommended for an adjournment of sentencing. Those who had been satisfactory "temporary" enrollees were recommended for an adjournment of several months, while those who had been in detention between the dates of conviction and sentencing were recommended for a 1-month adjournment. At the end of the prescribed period of supervised release, participants were recommended for either favorable termination of their supervised release status, further participation in the program, referral to a different agency, or unfavorable termination of their supervised release status.

As anticipated, the stabilization of referral procedures seems to have had a significant impact on sentencing patterns in cases serviced by the project. If an interim adjournment for the purposes of supervised release is construed as a non-prison disposition, the overall rate of nonprison sentences during the 10-month

period of March to December, 1970, was 57 percent (333 of 580) as compared with 44 percent during the project's first 8 months (June, 1968, to February, 1969). Among the 333 nonprison cases, 125 were placed in the VOI program.

When the project began making referrals to VOI, few precautions were taken to insure that the defendant actually arrived at VOI's offices—located one block from the courthouse. It was subsequently discovered that many defendants had never appeared at VOI. Therefore, a system was instituted in which a representative of VOI appeared at the project's offices to meet and escort every defendant who had been referred to VOI. The importance of this simple task cannot be overemphasized. First, the risk of the defendant not arriving at VOI was eliminated. Secondly, the fact that someone appeared to escort the defendant to VOI gave him the feeling that a genuine effort was being made to help him. Continuous physical contact with the defendant from the courthouse right up to his orientation at VOI served to increase his interest in the program and his subsequent participation therein.

However, not all defendants who qualified for supervised release could be referred to VOI. Some did not reside within the geographical boundaries prescribed by VOI; for others, the project was unable to effectuate a positive field verification of their residence (a prerequisite for formal admission to VOI); some were too heavily addicted to drugs to be able to participate in a nonresidential community counseling program; others were simply not interested.

The project's narcotics coordinator assisted defendants who were seeking to treat and cure drug problems. He was in close contact with various addiction treatment facilities and could normally have someone admitted to an appropriate program on the same day or within 24 hours. He was an ex-offender with a thorough understanding of the problems of addiction, having previously used drugs for several years. His function was to determine the extent of a defendant's drug problem and to select and recommend an appropriate method of treatment. No defendant was ever referred to a program unless its requirements had been explained to him and he had agreed to comply with them. The narcotics coordinator maintained contact with both the defendant and any program to which he was referred during the period of his adjournment. He also prepared or obtained progress reports for submission to the court on the next adjourned date. In addition, he provided one-to-one counseling for defendants awaiting admission or not referred to a formal treatment program.

Although a defendant may have qualified for supervised release, the project was not always able to effectuate an appropriate referral. In such a case, the project's report indicated an inability to make a *specific* sentence recommendation and usually recommended

that the court order an I&S report to explore the possibility of placing the defendant on probation. If the defendant was in custody because of a "hold" from some supervising agency (e.g., Department of Parole, Office of Probation, Narcotic Addiction Control Commission), the project usually recommended a sentence of specific conditional discharge back to the agency in question so that supervision of the defendant could resume. This type of specific conditional discharge should be distinguished from the one mentioned earlier. Here the supervising agency has the power to unilaterally issue arrest warrants for those persons who do not comply with its requirements. When a warrant is lodged with the Department of Correction, it results in a hold which precludes the defendant from being released until the warrant is vacated or executed.

#### J. Monitoring the Progress of Referrals

Any program which attempts to divert convicted misdemeanants into a program of interim supervised release with a view toward eventual nonprison sentences for satisfactory participation must keep the court informed of a participant's progress. Thus, a court report was prepared by VOI for each defendant describing his participation in its community counseling program and containing a recommendation for favorable termination of the defendant's supervised release status, unfavorable termination or continuation in the program. A sample VOI Court Report is contained in Appendix J. When the defendant was to be favorably terminated, the original project interviewer prepared a Supplementary Presentence Report, as shown in Appendix K, usually containing a sentence recommendation of conditional discharge, to which the VOI Court Report was attached. When the defendant was to be unfavorably terminated, the interviewer, after conferring with a VOI representative, prepared a Supplementary Report containing a recommendation for a different referral or a statement that no further nonprison recommendation could be made. When the defendant was to be continued in the program, the VOI Court Report requesting a further adjournment was submitted by itself. When defendants were referred to other service-providing agencies, at each scheduled court appearance the agencies normally submitted a progress report which contained a recommendation for termination or continuation in the program. When a defendant had made sufficient progress in any program involving supervised release and a favorable report was submitted, the judge almost invariably granted a nonprison sentence—usually a conditional discharge. Conversely, if a defendant did not progress sufficiently, he might have received a harsher sentence than he originally would have received. Based on a tacit understanding between the project and the court, these

"ground rules" were explained to the defendant prior to effectuating a referral. Usually they were restated by the judge at the first sentencing appearance if the case was to be adjourned and the defendant released on his own recognizance. Without such ground rules, it would have been virtually impossible to gain any kind of credibility with the defendants or to be able to effectively supervise and help them. The reason for this is that a prison sentence after compliance with the supervising agency's requirements would have been analogous to a prison sentence after successful completion of a period of probation.

In one case, the project recommended an adjournment and release on personal recognizance to enable the defendant to enter a narcotics treatment program (a form of supervised release). This recommendation was followed. Several months later, the defendant appeared for sentencing, and the Supplementary Report indicated that he had made significant progress by refraining from the use of drugs and recommended a sentence of conditional discharge. Acknowledging the defendant's progress, but basing his decision on the defendant's criminal record prior to the period of adjournment, the judge (who was not the one who had granted the adjournment) sentenced the defendant to 6 months in jail. When the situation was discovered, the project director immediately approached the judge in chambers and convinced him that a prison sentence, after the defendant had complied with the conditions of his release, would be both inequitable to the defendant and damaging to the project. An application for resentencing was granted. When the defendant was returned to court, he was resentenced to a conditional discharge with apologies.

As of March 12, 1971, of 46 VOI participants who were returned to court with recommendations for favorable termination from the program, 44 were recommended for, and received, nonprison sentences of conditional or unconditional discharge. A probation report was ordered for the remaining two participants who ultimately received sentences of conditional discharge and fine. This clearly demonstrates the judges' willingness to grant nonprison sentences to defendants who successfully completed their periods of supervised release.

If a defendant's performance was unsatisfactory and an unfavorable report was submitted, the judge would, in most instances, mete out a prison sentence. Since those who were referred for supervision knew that they would probably receive a prison sentence if an unfavorable report was submitted to court, they were, perhaps, more inclined toward meaningful participation in the program.

Many defendants for whom an unfavorable report was to be submitted did not voluntarily appear in court on their next scheduled date, and a bench warrant was

issued for their arrest. It then became the responsibility of the Police Department's warrant squad to locate, arrest and return these defendants to court. However, because of the large number of bench warrants issued by the Criminal Court each year and the small number of officers assigned to execute them, many of these defendants were only returned to court if they were subsequently arrested for another crime. When the project began recommending adjournments for cases thought to qualify for supervised release, an arrangement was made with the warrant squad (police officers assigned to execute bench warrants). It was agreed that "special attention" would be given to bench warrants issued in cases where the project had recommended an adjournment. However, the warrant squad was unable to fulfill the agreement—both because of its large caseload and an inability to locate many of the defendants.

Earlier, the project had been recommending adjournments of up to 6 months for defendants who were initially thought to be suitable for supervised release. It was discovered (especially at VOI) that the dropout rate was quite high. In an effort to reduce the rate, the length of the adjournment was shortened so that the defendant would be required to report back to court sooner and more often. This apparently had a favorable effect upon participation, since the dropout rate did, in fact, decrease.

Originally, the project attempted to refer to VOI all defendants who qualified for a supervised release, who were not hard-core addicts and who had no impediment to their being released, such as a warrant from another court. "Hard-core addict" was defined by VOI as someone who was using drugs on a regular basis and would, therefore, not be able to function in a group therapy situation. However, it was discovered that the objective criteria used in arriving at a sentence recommendation were not sufficient for selecting defendants for a specific referral program. Thus, a second interview was instituted. During this second interview the defendant was confronted by a staff member of VOI in order to further explore (on a more subjective level) his motivation and potential for favorable participation. This procedure was extremely important in evaluating defendants who were in custody at the time of interview, since they probably would not have been released at sentencing unless the project made a recommendation for supervised release. On the other hand, in cases of defendants not in custody at the time of interview, a recommendation for supervised release only required an adjournment of sentence, not a change in the defendant's custody status.

The use of a shorter adjournment and the second interview were both instituted in September, 1970. Prior thereto, the percentage of cases terminated from the VOI program with an unfavorable report was 58

percent (62 of 107); from September, 1970, to March, 1971, it dropped to 45 percent (47 of 104).

#### K. Final Sentencing Recommendations

Considerable attention has been devoted to the category of supervised release recommendations since, for the most part, it did not exist prior to the inception of the project. However, many defendants did not receive a recommendation for supervised release and were usually sentenced at the first appearance after conviction. For those defendants who scored highest on the guidelines, a recommendation for a sentence involving unsupervised release (unconditional discharge, conditional discharge or fine) was made.

When a defendant did not qualify for any non-prison sentence recommendation, the presentence report was submitted "For Information Only" (FIO) without any sentence recommendation. IO, however, came to be regarded by most judges as tantamount to a recommendation for prison. During 1971, prison sentences were meted out to almost 90 percent of the defendants whose reports were submitted "For Information Only."

In certain cases, a defendant would have qualified for a nonprison sentence recommendation if it had been possible to verify his social history information. Because of circumstances beyond its control, however, the project was unable to complete verification and, therefore, was unable to make a nonprison recommendation. This type of case is to be differentiated from an FIO case—where, whether or not there had been verification of all information about a defendant, he did not qualify for a nonprison recommendation.

#### L. Data Collection and Research

A demonstration project, in addition to implementing and testing an idea, must be prepared to measure and analyze its performance. Furthermore, a project which makes sentence recommendations based upon objective factors must maintain a constant sensitivity to change—in the type of defendant serviced, in judicial practices, and in the policies of arresting officers, prosecutors, defense attorneys, the Office of Probation and other administrative bodies affecting the disposition of cases. The necessary sensitivity can be achieved by a careful recording procedure and the aid of a small amount of computer time. The project's research staff consisted of a part-time research director and two part-time research assistants, all of whom were doctoral students in Sociology, and a research consultant who was a Ph. D. and Professor of Sociology.

The project's research staff recorded pertinent information from the defendant's court papers in two

stages by means of a numerical coding system which was geared to a FORTRAN computer program. The first stage occurred immediately after identification. The items recorded at this time included general information about the defendant (names, aliases, addresses, sex, ethnicity, etc.); his criminal identification numbers;<sup>11</sup> any social history information available from the Office of Probation "ROR" reports,<sup>12</sup> information concerning the court proceedings,<sup>13</sup> and available information concerning the defendant's prior criminal record.<sup>14</sup>

The court papers were then returned to the proper court file, and the receipt which had been put in the file in place of the papers was retrieved. In this way, both the court and the project knew the location of a defendant's court papers at all times. The research staff usually took no more than a day to record the information from the previous day's court papers and to return them to the court files.

The second stage of coding occurred after sentencing. At this stage, data elicited from the defendant during the presentence interview were recorded in three sections, relating to the three parts of the sentencing recommendation guidelines. A fourth section, Circumstances of Present Offense, was used by the project until the first substantial body of data had been recorded and analyzed. That analysis suggested revisions in the section, and its use as part of the sentencing guidelines was subsequently abandoned. Also recorded at this point were the dispositions of cases appearing on the defendant's prior record and information concerning the sentence.

The first aim of the research was to evaluate the effectiveness of the project in terms of the following three criteria: (1) among cases serviced by the project, did the actual sentences imposed by the judges correlate closely with the project's recommendations; (2) did the presence of the project's presentence report result in a rate of prison sentences which was significantly lower than the rate for comparable cases in which no presentence report was prepared; and (3) did the use of the project's presentence reports result in undue added risk of recidivism. The second aim of the research was to examine each item contained in the sentencing guidelines in order to determine its value in influencing sentencing patterns and in estimating the defendant's likelihood of being rearrested. Finally, the research was aimed at evaluating the project's referral procedures concerning cases handled by the narcotics coordinator and those referred to Volunteer Opportunities, Inc. Sentencing patterns, recidivism rates, and changes in the family ties, employment and narcotics use of referred cases were all monitored to determine changes occurring during and after the referral process. In the case of VOI, part of the research was undertaken by the referral agency itself, under a self-evaluation budget allocation.

The work of the research staff also benefitted the project in its dealings with related agencies. The Office of Probation was occasionally asked by the court to prepare a traditional long-form presentence report after the project had submitted its report. On a limited basis the research staff was able to compare the contents and recommendations of both types of reports, and the rates of agreement between each agency and the court.

In certain cases, Legal Aid attorneys were undecided whether their best legal strategy was to enter into a plea bargain and have the defendant sentenced immediately ("waiver cases") or to have the case adjourned so that a presentence report can be prepared. The research staff was able to show these attorneys which types of cases would most benefit from a presentence report, and also pointed out to them a substantial body of waiver cases which had gone to prison but which, upon examination, were found to have been eligible for nonprison sentence recommendations according to the project's guidelines.

#### M. Administration and Staff

The staff of the project grew since its inception from 4 to 11, four of whom were part-time. To the extent that various staff functions have not been discussed previously, they are as follows:

In addition to general supervision, the project director coordinated the operational in-court procedures with those of the research staff. He dealt with the central office of the Vera Institute of Justice and the Sentencing Committee of the Mayor's Criminal Justice Coordinating Council and was responsible for coordinating the project's activities with those of Volunteer Opportunities, Inc. and other agencies to which referrals were made. He also had the major responsibility for the project's relationships with all agencies which function in or in connection with the court.

Due to the nature of his work, the administrative assistant was the project's grass-roots public relations person. He acted as liaison on a day-to-day basis with court and other agency personnel and was the person through whom defendants and others usually had their initial contact with the project. He was responsible for the identification of all cases, the maintenance of all records regarding the progress of a case through the project, and the allocation of cases among the interviewers. He presented all reports to court and where necessary made formal court appearances. The job of administrative assistant required above-average intelligence, attention to detail and the ability to work under time pressure. It was found that a college-educated person was best for this position.

The role of interviewer, of whom there were ultimately three, has been defined for the most part in the

section on "Interviewing." They often maintained contact with their defendants after final sentencing, having provided some of them with moral support or ancillary tangible assistance in the form of advice or referrals to various agencies, even in cases where a formal referral was not recommended as part of the sentence. The job of interviewer required an ability to relate to people—especially those who were in trouble and for the most part impoverished. It also required the ability to strike a balance between concern for the defendant and objectivity, since it is obviously impossible to recommend nonprison sentences or provide other assistance for all defendants interviewed. Persons

with a college education and some prior experience in a human service profession have proven to be best for the job. One of the interviewers served in the Peace Corps, and two came to the project from the New York City Department of Social Services.

The job of narcotics coordinator was filled by an ex-addict who had spent considerable time in prison, and was therefore able to identify closely with the people he attempted to help. Experience indicated that defendants were more inclined to be honest about the details of their drug problem with this type of person than with a trained social worker or even a project interviewer.



### III. THEORY, EXPERIENCE, AND POLICY IMPLICATIONS

#### A. A New Type of Presentence Report

1. *What's different about it?* The presentence reports submitted to the court by the project differed substantially from traditional reports submitted by most probation agencies. This was intentional rather than accidental. In discussing the content of traditional presentence reports, the President's Commission stated: "Presentence reports in many cases have come to include a great deal of material of doubtful relevance to disposition in most cases. The terminology and approach of reports vary widely with the training and outlook of the persons preparing them. The orientation of many probation officers is often reflected in, for example, attempts to provide in all presentence reports comprehensive analyses of offenders, including extensive descriptions of their childhood experiences. In many cases, this kind of information is of marginal relevance to the kinds of correctional treatment actually available or called for. Not only is preparation time-consuming, but its inclusion may confuse decision-making." *Task Force Report: Corrections*, 19.

In place of a relatively long narrative report containing a psychological-psychiatric orientation, the Vera report was limited to a brief compilation of behavioral variables such as family ties, residence, employment, and criminal record. The information was verified whenever possible, and unverified information was clearly labeled as such. Hearsay and speculation were almost entirely omitted. The report went on to make a specific sentence recommendation based on an objective weighting of the behavioral variables delineated in the project's sentence recommendation guidelines. While the point scale used to weigh such factors was originally more intuitive than statistical, it was revised in August 1970, to reflect the results of research into the correlations which the individual factors had had with respect to sentencing patterns and subsequent recidivism. Although it cannot be fairly claimed that the manner in which the project derived its sentence recommendations eliminated all arbitrariness by the investigating agency, it did eliminate almost all sub-

jectivity by investigators and, more importantly perhaps, made more visible the cause and effect of the sentencing recommendation process.

2. *How has the court reacted to it?* In general, there was a high degree of correspondence between the sentence recommendations contained in the project's reports and the court's actual sentences.<sup>15</sup> The court meted out a nonprison sentence in 83 percent of the cases in which such a sentence was recommended.<sup>16</sup> Prison sentences were meted out in 87 percent of the cases in which the project was unable to recommend a nonprison sentence.<sup>17</sup> The overall rate of agreement between recommendation and sentence was 86 percent.

Before analyzing these data in greater detail, a few cautionary words are in order. The original purpose of the project's presentence report was to provide the court with more information about the defendant's social history, rather than to substantially alter existing sentencing patterns. Indeed, the lengthy process used to formulate the original recommendation guidelines included careful consultation with the judges of the Bronx Criminal Court to ascertain the significance which they ascribed to various factors in reaching a sentencing decision. In addition, old presentence reports of the Office of Probation were examined to help isolate and weigh factors which seemed to be associated with the court's actual sentence. Thus, it was hardly surprising to find a high correlation between recommendations based on factors so identified and actual sentence.

The preceding discussion assumes that there was in fact a type of causative relationship between the project's recommendations and actual sentences, but downplays its significance because the manner in which the recommendations were derived seems, at least in part, to have compelled such a result. It is also possible to argue, however, that the similarities between recommendation and sentence were produced by an altogether different process—namely, that the project's recommendation provided the court with a peg to hang its hat on. Should the peg break and the defendant who had been set free commit a serious new

crime, the project, it is argued, would have had to bear or at least share the blame. The project did not undertake any research which would confirm or deny such a hypothesis.

Returning now to the data on rates of agreement between recommendation and sentence, one finds a lesser (but still relatively high) rate of agreement between specific types of nonprison recommendation and actual sentence. Where the project recommended either a general conditional discharge or an unconditional discharge—in actual practice virtually identical types of unsupervised release<sup>18</sup>—such discharges were granted 69 percent of the time. In an additional 13 percent of such cases, however, the court merely imposed a fine, thus raising the total of those receiving an unsupervised release to 82 percent.

Where probation was recommended, the court granted it in 46 percent of the cases (10 of 22) with an additional 18 percent (4 cases) receiving sentences of unsupervised release. The remaining 36 percent (8 cases) received prison sentences. The apparent cause of this much disagreement between recommendation and sentence was the recent criminal record of the offenders. Among those granted sentences of probation, only 4 of the 10 had been arrested within the previous year, while among those sent to prison, 7 of the 8 had had an earlier arrest within the previous year. Section B, below, will discuss in greater detail the selectivity of the normal process by which defendants in the Bronx Criminal Court are considered for probation and how this would affect cases in which the project had made probation recommendations.

Did specific variables have a particularly strong effect on the rate of agreement between recommendation and sentence? This question was answered separately for two categories of variables. The first category consisted of those background characteristics of the defendant (marital status, occupational status and prior criminal record), which had already been included in the weighting process which produced his sentencing recommendation. Here an attempt was made to learn whether a particular factor was properly weighted. The second category consisted of variables related to the court process rather than to the defendant in an attempt to find influences on sentencing other than those in the social history of the defendant. These variables related to the court process were: type of counsel after arraignment, time elapsing between conviction and sentence, custody status of the defendant at the time of sentencing, defendant's admission of narcotics use during a court-ordered medical examination, and results of said medical examination.

In the first category, it was found that the court attached a greater significance to a defendant's employment status than did the original sentencing guidelines. Thus, while the court agreed with nonprison

recommendations 83 percent of the time, the rate of agreement rose to 86 percent when the defendant was fully employed and fell to 76 percent when he was unemployed. Similarly, while the court agreed on "prison recommendations" 87 percent of the time, the rate fell to 82 percent when the defendant was fully employed and rose to 92 percent when he was unemployed. These findings suggested that the weighting assigned to full employment be increased both to reflect its undervalued influence in sentencing outcome and simultaneously to ascribe to employment a greater relative weight vis-a-vis unemployment status. Such a change was incorporated into the recommendation guidelines in September, 1970.

A second background variable which appeared to be related to sentencing patterns and recidivism was the recency of the defendant's last prior arrest. Where the last prior arrest had occurred within the previous 6 months, the court agreed with "prison recommendations" 94 percent of the time but agreed with nonprison recommendations only 46 percent of the time. In addition, offenders in this category recidivated at a rate of 53 percent as compared with the overall rate of recidivism of 31 percent for all project-serviced defendants. Both factors suggested that the item be incorporated into the guidelines, and this was done in September, 1970.

Turning to those variables related to the court process itself, one finds two factors which seem to have had a disturbingly large effect on the correlation between recommendation and sentence. These were the type of counsel and the detention status of the offender on the day of sentencing. While one finds the court agreeing with nonprison recommendations at the same rate for both private counsel and Legal Aid Society cases (a point discussed in greater detail below in Section C), in cases where a nonprison recommendation was withheld, the court imposed a prison sentence 95 percent of the time where the offender was represented by Legal Aid, but only 54 percent of the time where the offender had private counsel. This was not an across-the-board difference for all private counsel and Legal Aid cases, but only for those in which the offender was unable to qualify for a nonprison recommendation. Thus, differences in the social backgrounds of the defendants in the two categories of legal representation would seem to have been at least partly controlled.

What then explains this enormous difference? One speculative argument, but one which has a basic plausibility to those familiar with the Bronx Criminal Court, is that private counsel are able to engage in tactics not readily usable by Legal Aid. The most important of these is "judge shopping." By strategically adjourning cases away from certain dates to others, counsel can insure that sentencing occurs before a favorable judge.<sup>19</sup>

The adjournment is often obtained by nonappearance of the lawyer or his claim of having a conflicting appearance in another court. Legal Aid, on the other hand, assigns a specific lawyer to a specific courtroom to handle all cases therein. In addition, Legal Aid Lawyers have extremely heavy caseloads and are thus under substantial pressure to dispose of cases. Whatever the reason for the difference, it is apparent that, other considerations being equal, one who is able to hire private counsel is substantially more likely to avoid a prison sentence than one who is unable to hire such counsel. This occurs in precisely those cases in which a prison sentence seems most probable.

The second significant court variable was whether or not the offender was in custody on the day of sentencing. Recommendations for nonprison sentences were accepted by the court in 90 percent of the noncustody cases but in only 68 percent of the custody cases. Similarly, "prison recommendations" were followed in 95 percent of the custody cases, but in only 66 percent of the non-custody cases. Once again (as with the type of counsel), the separation into recommendation categories would seem to have controlled, in the aggregate, for differences in social history. This suggests that detention status had a strong independent influence on sentencing. Several judges have candidly stated in private discussions that all things being equal, they find it much more difficult to incarcerate a defendant who is free on bail or personal recognizance than one who is in custody at the time he appears for sentencing.

3. *Has judicial reliance on this type of presentence report posed a danger to the community?* As seen in the preceding discussion, the court granted a nonprison disposition in 83 percent of the cases in which it had been recommended by the project. To what extent was this "reliance" misplaced? More specifically, did those releasees pose a greater danger to the community than other defendants in the Bronx Criminal Court to whom nonprison sentences were granted in the absence of any presentence report? Research results indicate that project-recommended releasees posed no undue additional risk of recidivism. Their rearrest rate during a subsequent 6 months time-at-risk<sup>20</sup> was 18 percent (19 of 108) compared with a similar rate of 16 percent (15 of 95) for those offenders receiving nonprison sentences but for whom no presentence reports had been prepared. The result is hardly surprising, since project cases and no-report cases were basically comparable and were, in this subsample, receiving nonprison sentences at identical rates of 37 percent.

Another important but more speculative statistic concerns the hypothetical recidivism rate if judges had followed all of the project's nonprison recommendations.<sup>21</sup> Had this in fact occurred, the rate of release would have risen from 37 to 45 percent, while, at the same time, the recidivism rate would have remained unchanged at 18 percent (24 of 131). Thus, not only

does the project mechanism seem not to have resulted in an undue added risk of recidivism, but even greater reliance could have been placed upon it to release additional offenders without an increase in the danger to society. Turning to cases in which a non-prison recommendation could not be made, the recidivism rate was 41 percent (64 of 158). Where judges granted non-prison dispositions in spite of the absence of such a recommendation, the recidivism rate was 37 percent.

4. *Where do we go from here?* Given the existence of a presentence report which can be prepared quickly and inexpensively, which is generally accepted by the judiciary to which it is submitted, and which has not led to any widespread granting of inappropriate sentences, what should be done with it? It would seem a bit premature to say that this short-form presentence report should sweep aside traditional, long-form reports with a psycho-psychiatric orientation. For one thing, the Vera report has only been tested on persons convicted of misdemeanors, although many of them were originally charged with felonies and had the charges reduced by the process of plea bargaining. For another, it was used on a population which differs substantially from the population in the same court receiving a traditional report (see Section B below).

The logical conclusion would seem to be that the short-form report be tested, in many jurisdictions, in controlled experiments with traditional probation reports to determine whether in fact a few easily verifiable behavioral variables can be used to make sentencing determinations; previously thought to require much more exhaustive and elaborate inquiries into the offender's background. And in those cases in which they are deemed to be insufficient, short-form reports can serve as indicators of the need for more detailed background information on the defendant. Indeed, project-serviced cases which qualified for supervised release, but in which there was an inability to make a specific sentence recommendation, resulted in a substantial number of Office of Probation investigations being ordered where the judge did not originally see fit to order such a report.

## B. The Effect of an Outside Agency on the Sentencing Process

To what extent has the project produced changes in the sentencing process in the Bronx Criminal Court? To what extent are these changes a product of Vera's outside, independent, nonofficial status?

The most obvious effect of the project was the enlargement of the class of defendants receiving presentence reports. More significant than any increase in absolute numbers was the change in the social characteristics of defendants making up this class. Prior to the advent of the project, the only misdemeanants re-

ceiving presentence reports were, for the most part, those whom the court wished to consider for sentences of probation. In such cases, the court asked the Office of Probation to prepare a presentence report. From all appearances, the judges ordered probation reports only when they felt that an offender was especially worthy of leniency. As can be seen from Table 3-1, below, probation cases were twice as likely as project or no-report cases to have no prior arrests or no prior convictions. More than half of the probation cases had no prior arrest record, and 80 percent of them had no prior convictions. Probation cases were also much more likely to have been represented by private lawyers than either project or no-report cases; 45 percent of them had retained their own counsel, while the other two groups had retained counsel rates of only 20 and 24 percent respectively. Fewer probation cases remained in jail between conviction and sentence. More than 60 percent of them were not in custody on the day of their sentence, while 43 and 39 percent of the other cases were free on bail or personal recognizance on their date of sentencing. And project or no-report cases were twice as likely as probation cases to have had a prior arrest within the previous 6 months.

**Table 3-1**  
**COMPARISON OF SELECTED VARIABLES FOR THREE**  
**GROUPS OF OFFENDERS**

Variable	Project cases (Total N=303)	Office of probation cases (Total N=62)	No report cases (Total N=323)
Percentage			
Number of prior arrests in record:			
No previous arrests.....	24	53	26
1-2 arrests.....	27	34	23
3-4 arrests.....	24	07	21
5 or more arrests.....	25	07	29
Total.....	100	*101	99
Number of prior convictions in record:			
No previous convictions.....	42	80	40
1-2 convictions.....	33	16	31
3-4 convictions.....	12	---	14
5 or more convictions.....	13	03	16
Total.....	100	99	101
Type of counsel (other than at arraignment)			
Legal aid.....	65	40	62
Private attorney.....	20	45	24
No data.....	16	15	14
Total.....	101	100	109
Custody status on day of sentencing:			
In custody.....	57	37	61
Not in custody.....	43	63	39
Total.....	100	100	100
Time since last prior arrest:			
Less than 6 months.....	23	10	19
6 months to 1 year.....	27	19	32
2 to 5 years.....	16	11	15
More than 5 years.....	08	07	07
No prior arrests.....	24	53	26
No data.....	02	---	02
Total.....	100	100	101

\*Percents do not always add to 100 because of rounding.

The fact that the project serviced a substantially different offender population with its presentence reports than did the Office of Probation was the result of a practical accommodation rather than an intentional

design. As explained above, judges did not order the preparation of Vera reports. Instead, they permitted the project to intervene and investigate cases which they had not already ordered the Office of Probation to investigate. Thus, the project necessarily had to operate on the residual caseload left over after easier, probation-bound, I&S cases had been skimmed off.

Two consequences followed from this arrangement. First, although a Vera report had been ruled to be a legally sufficient basis upon which to order a sentence of probation, the project's recommendations for probation were followed much less frequently than its other nonprison recommendations, as indicated above in Section A(2). Second, when the judge did in fact follow project recommendations for probation, the Office of Probation reported a higher first-year failure rate with such cases than with its normal workload. As a result, after the project's first year, it ceased recommending sentences of probation and began to develop community-based supervisory services for those defendants qualifying for nonprison recommendations but thought to require some measure of supervision. The development of this community referral process has been discussed in greater detail above.

In addition to servicing a new clientele, the Bronx Sentencing Project brought a new type of worker into the court process—one who was relatively young, non-civil service, college educated and, perhaps most significant, did not expect to spend the remainder of his working career in his project capacity nor one necessarily akin to it. There are some indications that this led to a significant defendant orientation as reflected in unpaid overtime attempts to verify favorable information, exhaustive attempts to find drug treatment programs for addicted defendants, and other expressions of an identification with the offender clientele.

The reaction of the court to the presence of the outside agency was hard to measure. Previously, it was stated that one explanation for the high correlation between the project's recommendations and the court's actual sentences might have been the feeling on the part of the court that the outside agency would have to assume responsibility for the consequence of the court's following its "advice." While the same relationship of "adviser" to "decider" exists with respect to the Office of Probation and the court, the Office of Probation's recommendations are specifically solicited and have been for many years. That agency is an arm of the court and is financed under the court's overall budget. Under such circumstances, it is unlikely that the court would see the Office of Probation as a meddler in the sentencing decision process. Except in cases of an inaccurate or incomplete investigation being presented to it, the court would most likely see itself as solely responsible for the sentencing decision.

In a less speculative vein, two interesting court reactions to the project were observed. The first was

that the court literally implored the project to provide it with a nonprison alternative for a particular offender. The second was that the court severely castigated an offender who had not succeeded in a community-based referral with the incantation, "even Vera couldn't do anything with you." Both reflect an erroneous impression by the court that the outside agency has unlimited direct and indirect resources for straightening out a wayward individual.

### C. The Availability of Presentence Reports to Defense Counsel and Its Effects on Sentencing Patterns

In New York State, presentence reports are not made available to defense counsel. The argument most frequently advanced in support of such a rule is that source of information must be kept confidential or else they will eventually dry up. In opposition to the rule, it is argued that presentence reports often include material prejudicial to the defendant which is subjective, incorrect, unsubstantiated, irrelevant or impossible to evaluate, and that defense counsel ought to be permitted to controvert or expose such material.

To a significant extent, the project's short-form presentence report made much of the debate on this point moot. Since the information content of the report was limited to verified information with respect to a few behavioral variables, the problem of overinclusiveness was eliminated. The substantial elimination of hearsay reduced concern over judgments of witness credibility made by the investigator and concern over the investigator's ability to evaluate the offender's attitude. And finally, the short-form report reduced the phenomenon of an investigator taking other social agencies' data and relying on it as gospel.

From its inception in July 1968, the Bronx Sentencing project consistently provided defense counsel with a copy of its report to the court. In over 2,000 cases, no objection was ever raised with respect to this practice.

The Vera report seems to have had dramatically opposite effects in cases represented by the Legal Aid Society as compared with those represented by private counsel. As can be seen from Table 3-2, below, Legal Aid cases with Vera reports received prison sentences at a rate 12 percentage points lower than those without reports. Private attorney cases with Vera reports received prison sentences at a rate 11 percentage points higher than those without reports. These discrepancies could be dismissed as offsetting effects. From another point of view, however, they could be seen as complementary, since their combined result is a significant reduction in the wide discrepancies in case outcome

based on differences in counsel. In no-report cases, those using Legal Aid attorneys suffered a rate of prison dispositions 57 percentage points higher than those with private attorneys. In Vera cases, the gap was narrowed to a 34 percentage point difference.

Table 3-2

#### RELATIONSHIP BETWEEN PRESENCE OF SENTENCING MECHANISM AND ACTUAL SENTENCE CONTROLLING FOR TYPE OF COUNSEL

Actual sentence	Legal aid		Private attorney	
	Percent	(No.)	Percent	(No.)
Vera Report				
Prison.....	65	(127)	31	(18)
Nonprison.....	35	(67)	69	(41)
Total.....	100	(194)	100	(59)
No Presentence Report				
Prison.....	77	(118)	20	(12)
Nonprison.....	23	(36)	80	(48)
Total.....	100	(154)	100	(60)

Two reasons may account for these results. First, in Legal Aid cases, the Vera report may have provided information which would not otherwise have been assembled by the overburdened attorney. Thus, the Legal Aid lawyer was able to use the Vera report for purposes of advocacy. In fact, among project cases carrying nonprison recommendations, Legal Aid and private attorneys had virtually identical percentages of nonprison dispositions. (See Table 3-3, page 21.)

The explanation for the higher rate of prison sentences in private attorney cases receiving a Vera report may be the exact converse of the argument used to explain the project's results in Legal Aid cases. The Vera report may have been a countervailing force to the advocacy of retained counsel. As seen above, in the absence of Vera reports, private counsel cases received prison sentences only 20 percent of the time. When investigated by the project, similar private counsel cases received FIO (prison) recommendations 44 percent of the time (24 of 57). (See Table 3-3.) Thus, the project may have tended to make the court more aware of the background of "high risk" privately represented defendants. Judges imposed prison sentences in only 54 percent of these private counsel FIO cases—constituting one of the lowest rates of correlation between recommendation and sentence. This had the effect of raising the overall percentage of prison dispositions in private counsel cases above the 20 percent level which prevailed in the absence of a Vera report towards the 31 percent figure for all private counsel cases (both FIO and nonprison recommendations) serviced by the project. (See Table 3-2.)

Table 3-3

RELATIONSHIP BETWEEN RECOMMENDATION AND ACTUAL SENTENCE CONTROLLING FOR TYPE OF COUNSEL

Actual sentence	Legal aid		Private attorney	
	Percent	(No.)	Percent	(No.)
	FIO (prison) recommendations			
Prison.....	95	(102)	54	(13)
Nonprison.....	05	(5)	46	(11)
Total.....	100	(107)	100	(24)
	Nonprison recommendations			
Prison.....	19	(14)	18	(6)
Nonprison.....	81	(59)	82	(27)
Total.....	100	(73)	100	(33)

One further word on the project's impact in Legal Aid and private counsel cases must be added. The cli-

entle of each group of lawyers is not the same. It is often argued that those factors which enable a man to afford a private lawyer are the same factors which make a nonprison disposition more likely. In order to assess the significance of the project's reduction of the gap in the percentage of cases going to prison based on type of counsel, it is important to estimate the extent of the background differences in the offenders serviced by each type of counsel. The only useful measure available from research was the difference in the percentage of cases receiving prison recommendations—Legal Aid, 59 percent (107 of 180), and private counsel, 44 percent (23 of 57). Thus, based on the variables which make up the project's recommendation procedure, one would anticipate a 15 percentage point difference in prison sentences. Viewed in this context, the Vera report, among other things, helped significantly to narrow, but not eliminate, sentencing disparities based on differences in counsel.

## IV. CONCLUSION

Presently, misdemeanor sentencing in most high-volume metropolitan criminal courts is accomplished in an extremely haphazard manner. This situation exists because there are crucial needs for:

- Verified objective social history information in a shorter presentence report than that traditionally used by probation departments; and

- Court awareness of available community-based supervisory and service-providing agencies, so that referrals to such agencies can be made whenever appropriate.

The Bronx Sentencing project was undertaken with these needs in mind. The most significant practical results produced by the project were:

- Increasing the number of presentence reports ordered, by extending the rate of persons receiving these reports;

- A high rate of agreement between the project's recommendations and the court's sentences.

Major theoretical and practical implications of the project for future replication efforts and further research include:

- Demonstration of the hypothesis that the presence of both social history information and community-based alternatives to prison apparently results in a higher rate of non-prison dispositions at the first appearance for sentencing;

- Demonstration of the hypothesis that any increase in the non-prison disposition rate does not necessarily result in any significant increase in the rate of recidivism; and

- Realization that two factors—type of counsel and custody status on the day of sentencing—had a disturbingly large influence on sentencing patterns. Other factors being equal, defendants represented by the Legal Aid Society and those in custody at the time of sentencing received prison sentences much more frequently than those represented by private counsel and those not in custody at the time of sentencing.

## V. POSTSCRIPT

In October of 1971, the Bronx Sentencing project terminated operations. Earlier that year, after conferring with representatives of the New York City Criminal Justice Coordinating Council and the New York State Division of Criminal Justice—the two agencies which administer grants made in New York City pursuant to the Federal Omnibus Crime Control and Safe Streets Act of 1968—it was decided that the project had basically achieved its goals, and that any further experimentation concerning the feasibility of short-form presentence reports ought to be conducted by the Office of Probation.

In September of 1971, a new Criminal Procedure Law (CPL) became effective in New York State, replacing the old Code of Criminal Procedure (CCP) which had been in effect since 1881. Section 390.20 of the CPL strengthened the sentencing policy previously in effect, by explicitly prohibiting the imposition of certain sentences in misdemeanor cases unless the judge has previously ordered and received a written presentence investigation and report. The applicable portion of section 390.20 reads as follows: "2. Requirement for misdemeanors. Where a person is convicted of a misdemeanor a presentence report is not required, but the court may not pronounce any of the following sentences unless it has ordered a presentence investigation of the defendant and has received a written report thereof:

- (a) A sentence of probation;
- (b) A reformatory or alternative local reformatory sentence of imprisonment;
- (c) A sentence of imprisonment for a term in excess of ninety days;
- (d) Consecutive sentences of imprisonment for terms aggregating more than ninety days."

Judges had for years been imposing sentences of imprisonment in excess of 90 days, without ever having ordered a presentence investigation and report. This occurred despite the fact that section 943 of the old Code had mandated such investigations and reports for most misdemeanor cases. (The language of Section 943 of the Code was much more ambiguous than that in Section 390 of the CPL). The impending enactment

of the Criminal Procedure Law caused considerable consternation among persons in the field of criminal justice, since the Office of Probation was already operating under severe handicaps and was unable to properly service its existing caseload. Compliance with the requirements of the new CPL seemed virtually impossible, given the amount of time which a probation officer spent completing a traditional presentence investigation and report. Highly placed officials in the New York City Office of Probation have estimated the amount of time to be approximately fourteen hours.

Just after the enactment of the CPL, a new subdivision was added to section 390.30, which deals with the scope of the presentence investigation and report. This addition reads, in part, as follows:

4. Abbreviated investigation and short form report. In lieu of [a traditional presentence investigation and report] where the conviction is of a misdemeanor the scope of the presentence investigation may be abbreviated and a short form report may be made. The use of abbreviated investigations and short form reports, the matters to be covered therein and the form of the reports shall be in accordance with the general rules regulating methods and procedures in the administration of probation as adopted from time to time by the state director of probation . . . .

The practice commentary to section 390.30 written by Peter Preiser, Director of the New York State Division of Probation, states that:

Subdivision 4 was added after the enactment of the CPL . . . to permit the establishment of more innovative procedures in the structuring of the presentence investigation and report.

With the enactment of subdivision 4, it seemed quite likely that the State's probation departments, especially New York City's Office of Probation, would be able to cope with the almost certain increase in their caseloads contemplated as a result of section 390.20 of the CPL. Furthermore, it was felt that many of the cases which had previously been handled by the project would thereafter fall within Probation's domain. This, too,



had an effect on the decision to terminate the operation of the project. A "Short Form Presentence Report" (See Appendix L), was designed by the State Division of Probation. Although it is longer and contains more information, it is similar to the presentence report used by the project. The Division of Probation also designed a "Pre-Sentence Questionnaire" (Appendix M) for cases in which the defendant is released on bail or personal recognizance. A copy of the questionnaire is given to the defendant to be completed and brought with him to his scheduled interview.

Two months after the State began using its new short-form reports, a preliminary study of the new procedure was conducted in New York City.<sup>22</sup> Several interesting facts emerged from that study. First, it was recommended that, because of the press of time, verification should be attempted "only when information given by the defendant is of a positive nature and, therefore, would tend to enhance his position before the court."<sup>23</sup> This was a lesson which the project also learned at a relatively early stage. Second, the amount of time required to complete the new presentence investigation and report was about three and one quarter hours, which was slightly more than the amount of time spent by the project preparing its reports. The breakdown of the time is as follows:

Time	Task
Secure and Review Court Papers-----	1/2 hour
Review Questionnaire-----	1/4 hour
Interview with Defendant-----	3/4 hour
Collateral Interview-----	1/2 hour
Verification-----	1/4 hour
Evaluation and Report Preparation-----	1 hour
	<u>3 1/4 hours</u>

However, the time was usually spread over several days, since it was extremely difficult to complete a meaningful report on the same day that it was ordered. The preliminary study indicates that: "The same day' investigation practice practically precludes any verification procedures in such cases and seriously limits the use of existing probation department records."

Immediately after the project left the Bronx Criminal Court, VOI set up an office in part of the space formerly occupied by the project. A staff was trained to identify and interview prospective clients for VOI's treatment facilities. A prospective client was one who had been convicted of a misdemeanor and was awaiting sentence. Originally, the custody status of the defendant was disregarded, although the majority of those accepted by VOI were free on bail or parole. Subsequently, VOI decided to accept only noncustody cases.

Defendants were questioned about their family ties, employment and criminal record, but no objective guidelines, such as those used by the project, were used

by VOI. The interviewer's own perception of the defendant's commitment to work toward becoming drug-free (if addicted) and to participate in VOI's form of treatment was of paramount importance. This "eyeballing" technique was employed by ex-addicts who had been through the type of rehabilitation carried out by Phoenix House, a therapeutic drug program under the aegis of New York City's Addiction Services Agency.

Whereas the project was able to identify all cases qualifying for a presentence report, due to a lack of sufficient staff, VOI had to rely on referrals from judges, attorneys, prosecutors, probation and parole officers and others<sup>24</sup> who had been informed of its program. This led to a number of "voluntary enrollees"—those with no active court case pending in the Bronx Criminal Court. The main emphasis, however, remained on cases convicted of a misdemeanor and waiting sentence.

A recent study conducted in the Bronx Criminal Court indicates that the provisions of the new CPL have had an interesting impact on sentencing. (See Table 5-1.)

Table 5-1

SENTENCES OF A RANDOM SAMPLE OF ADULT DEFENDANTS IN THE BRONX CRIMINAL COURT, JANUARY-APRIL, 1972

Sentence	No Pre-sentence report		Pre-sentence report	
	Per-cent	(No.)	Per-cent	(No.)
Conditional discharge-----	10.3	(24)	20.0	(12)
Other nonprison-----	53.5	(124)	35.0	(21)
Adjournment contemplating discharge-----	18.5	(43)	0.0	(0)
Prison (less than 3 months)-----	14.2	(33)	10.0	(6)
Prison (more than 3 months)-----	3.5	(8)	33.3	(20)
Sentence unclear-----	0.0	(0)	1.7	(1)
Totals-----	100.0	(232)	100.0	(60)

Out of a total sample of 292 cases sentenced during the first 5 months of 1972, 60 (20.5%) had a presentence report and 232 (79.5%) were sentenced without a report. While this may appear to be an alarmingly high rate of cases sentenced without a presentence report, an examination of the dispositions of these cases is informative. Of the cases sentenced with a report, 55 percent received nonprison dispositions. This rate is similar to the project's 57 percent during its later months. In cases where no report was ordered, 82.3 percent received nonprison dispositions and 14.2 percent received a prison sentence not exceeding 90 days. The fact that no presentence report was ordered in these cases indicates that the judges are probably making a tentative determination at conviction concerning the kind of sentence they will mete out, since the CPL requires them to order a report before imposing a sentence of probation or imprisonment in excess of 90 days. In the 3.5 percent of the cases in which no report

was ordered and the defendant did receive a prison sentence in excess of ninety days, there was a waiver of the requirements of CPL § 390.20. See Chapter V. Postscript.

It is still too early to draw any firm conclusions from

this study, but it appears that under the new sentencing provisions of the CPL, the ratio of prison to nonprison sentences in the Bronx Criminal Court has remained similar to that existing under the CCP when the project was in operation.

## NOTES

1. New York Penal Law § 60.10. The term "conditional discharge" is one which is probably unfamiliar to jurisdictions outside of New York. Along with the sentences of unconditional discharge and probation, the conditional discharge replaces the old suspended sentence which for technical reasons was not deemed to have been a conviction. However, for purposes of this discussion, the unconditional or conditional discharge can be analogized to the suspended sentence or bench parole currently used in other jurisdictions, and, thus, the results of the Bronx Sentencing Project would certainly be applicable there.

2. New York Penal Law §§ 65.00, 65.05. (Emphasis added.) This clearly implies the necessity of a presentence report which is not commonly required by other jurisdictions for misdemeanor cases. However, whether required by law or submitted gratuitously, such information is undoubtedly beneficial to both the court and the defendants. Thus, although New York's legislative mandate was a motivating factor in launching the project, such a mandate is not crucial to either the theory or practice of misdemeanor sentencing.

3. Under New York Law persons 19 years and over at the time an alleged crime was committed are treated as adults.

4. But see *infra* note 19.

5. "The high manpower levels required to complete [presentence] reports have caused some authorities to raise questions as to the need for the kind and quantity of information that is typically gathered and presented. These questions are raised particularly with respect to the misdemeanor system, where millions of cases are disposed of each year and relatively few presentence investigations made." *Task Force Report: Corrections*, 19.

6. *Ibid.* at 78-79.

7. *Ibid.* at 18.

8. "Particularly in many misdemeanor cases, where correctional alternatives are usually limited, less information may suffice. Bail projects have developed reporting forms that can be completed and verified in a matter of a few hours and have proven reliable for decisions on release pending trial, which often involve considerations similar to those of ultimate disposition. These forms cover such factors as education and employment status, family and situation, and residential stability." *Task Force Report: Corrections*, 19.

9. New York City is composed of five boroughs which are also counties of the State of New York. The Bronx is one of these.

10. New York Code of Criminal Procedure 472.

11. These identification numbers are assigned to the defendant by the New York City Police Department's Bureau of Criminal Identification (BCI), the New York State Identification and Intelligence System (NYSIIS) and the Federal Bureau of Investigation (FBI). They are important for purposes of examining recidivism at a later date.

12. Prior to arraignment, the Office of Probation interviews most defendants for purposes of exploring the possibility of recommending pretrial release without bail. An "ROR" (Release on Recognizance) report containing information about the defendant's social history is then prepared for use by the judge in deciding the appropriate conditions of pretrial release.

13. Charge(s) at arraignment, the offense(s) of conviction, whether the defendant pleaded guilty or went to trial, whether he used a private or a Legal Aid attorney, the conditions of his pretrial release, the content of narcotics reports, psychiatric reports, etc.

14. Three elements of prior record were coded at this stage: the time span from first and last prior arrests to the present conviction, the number of arrests, and the types of crime. Crime types are coded according to a typology closely matching the Police Department's typology of crimes which is used by its statistical unit to compile monthly arrest statistics. Data relevant to the disposition of prior cases were recorded at a subsequent time.

15. In July of 1970, the project submitted to the National Institute of Law Enforcement and Criminal Justice a research report covering the cases serviced by the project from July 15, 1968 to February 28, 1969, its first 8 months of operation. Ensuing discussions concerning the project's impact are based upon the results of this research. The conclusions drawn from these cases may not necessarily reflect the current impact of the project. They were the first cases serviced by the project before it had become established in the court and before it had fully developed a referral capability. Later cases, which would more accurately have reflected these developments, could not be analyzed because of the length of time necessary for cases to progress through the entire sentencing process, serve prison sentences, and go through the 6 months time-at-risk chosen for analysis of recidivism.

16. Nonprison sentence recommendations made by the project during its first 8 months were: unconditional discharge, conditional discharge, fine probation and specific conditional discharge. The recommendation of an adjournment and parole for purposes of effectuating a supervised release had not yet been instituted.

17. As explained previously, when the project was unable to recommend a nonprison sentence, the report was submitted "For Information Only." These cases are referred to as FIO cases or as "prison recommendation" cases.

18. A general conditional discharge is granted on the condition that the offender not commit an additional crime for 1 year. If the condition is violated, the theoretical sanction is resentencing. However, this rarely if ever occurs, and thus

a general conditional discharge becomes the functional equivalent of an unconditional discharge.

19. The institution in the Bronx Criminal Court of all-purpose parts in which the same judge, assistant district attorneys and Legal Aid attorneys are assigned to handle the case from start to finish has somewhat curtailed the practice of judge shopping.

20. For research purposes, recidivism was defined as at least one rearrest for a fingerprintable crime (felony or serious misdemeanor) during a 6 months time-at-risk. If the offender went to prison for the present offense, this period began to run when he was released; if not, it began to run as soon as sentence was pronounced. Data on reconvictions were unavailable because of the time lag between rearrest and conviction, and a further lag between conviction and the reporting thereof in official records. Similar limitations also precluded using a longer time-at-risk.

21. By posing this question hypothetically, assumptions have

been introduced which make the conclusions considerably less reliable than if they arose from direct examination of what did, in fact, happen. In particular, for the purposes of the hypothetical, it was assumed that prison had no effect on offenders who were sent there despite a recommendation by the project to the contrary. Only under this assumption is it possible to compare the recidivism rates of those who did not go to prison with those who did.

22. Preiser, P., *Preliminary Study of the Use of the Abbreviated Presentence Investigation and Short Form Report in the Office of Probation for the Courts of New York City (as of November 6, 1971)*, State of New York, Division of Probation.

23. *Ibid.* at 4.

24. It should be noted that VOI did not supplant the operations of the project—it only provided the court with a sentencing alternative after having made a decision to accept the defendant into its program.



## *APPENDIX A. INFORMATION FOR DEFENDANTS*

VERA INSTITUTE OF JUSTICE  
BRONX SENTENCING PROJECT  
ROOM 306  
BRONX CRIMINAL COURT  
WASHINGTON AVENUE & 162nd STREET  
BRONX, NEW YORK 10451  
669-3100

### INFORMATION FOR DEFENDANTS

The VERA Institute of Justice interviews defendants who have been convicted of a Penal Law misdemeanor. We obtain information about your social history, attempt to verify it, explore the possibility of a non-prison recommendation and submit a presentence report to the Court. In this way, the Judge will have more information about you and will, therefore, be able to give greater consideration to your case.

In addition, if you are discharged at the time of sentencing, we can assist you by making referrals to any agencies or organizations which are appropriate.

A representative of VERA will appear at the Bronx House of Detention to interview you within the next few days.

If you make bail and are released, report back to our office for an interview.

# APPENDIX B. IDENTIFICATION WORKSHEET

IDENTIFICATION WORKSHEET

I. D. DATE	DOCKET NUMBER	PART	CONV. DATE	P. C. R. S.	NEXT ADJ. DATE	CUSTODY STATUS	DEFENDANT'S NAME	COMMENTS AND FURTHER ACTION	INT. NO.
							Each case is entered on this form at the time of identification and monitored until it is interviewed.		

## APPENDIX C. DAILY CALENDAR

DAILY CALENDAR							, 19			
LAST APP.	PART	J/P/B	DOCKET	INT. NO.	NAME	REF. STATUS	RECOMMENDATION	DISPOSITION	CDR	
					This form is used to follow the court appearance date of each case which has been identified.				✓	
<u>PRE-CONVICTION</u>										



APPENDIX D. RECALL SHEET



CRIMINAL COURT OF THE  
CITY OF NEW YORK

PART \_\_\_\_\_ COUNTY OF \_\_\_\_\_

RECALL SHEET

TO: COMMISSIONER OF CORRECTION, CITY OF NEW YORK.

THE COURT CLERK OF PART \_\_\_\_\_, CRIMINAL COURT OF THE  
CITY OF NEW YORK, COUNTY OF \_\_\_\_\_, HEREBY REQUESTS THAT THE  
FOLLOWING DEFENDANTS BE PRODUCED AT THE TIME, DATE, AND LOCATION  
BELOW NOTED FOR INTERVIEW BY THE VERA INSTITUTE FOR A REPORT TO  
BE SUBMITTED TO THE COURT FOR SENTENCING.

<u>DOCKET #</u>	<u>DEFENDANT</u>	<u>ADDRESS</u>	<u>AGE</u>	<u>CHARGE</u>
-----------------	------------------	----------------	------------	---------------

THE COURT IS REQUESTING THE ABOVE DEFENDANTS BE PRODUCED  
AT 9:30 A.M. AT PART \_\_\_\_\_, LOCATED AT \_\_\_\_\_,  
ON \_\_\_\_\_  
date

DATED \_\_\_\_\_

\_\_\_\_\_  
COURT CLERK, PART \_\_\_\_\_

SEAL OF COURT

APPENDIX E. IDENTIFYING DATA SHEET

BRONX SENTENCING PROJECT  
Vera Institute of Justice  
Identifying Data Sheet

Adj.  
Dates \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_

Adj. to  
Part \_\_\_\_\_ Int.# \_\_\_\_\_

PC ( ), PC & RS ( )  
From Waivers ( )

Name \_\_\_\_\_ Status \_\_\_\_\_

Attorney \_\_\_\_\_ Phone \_\_\_\_\_

Docket Number(s) \_\_\_\_\_

Conviction Date(s) \_\_\_\_\_

Part(s) \_\_\_\_\_

Judge(s) \_\_\_\_\_

Original Offense(s) \_\_\_\_\_

Conviction Offense(s)

By Plea \_\_\_\_\_

By Trial \_\_\_\_\_

Defendant's Address \_\_\_\_\_ Phone \_\_\_\_\_

Number of Days in Jail \_\_\_\_\_

NARCOTICS STATUS

Medical Exam: ( ) Negative ( ) Positive ( ) Ordered but no results

( ) ADA waives hearing on positive finding

( ) Found non-addict by hearing

CR-1 present with indication of drug use ( ); CR-1 with no signs ( )

( ) Prior drug arrest(s)

( ) No indications of drug use

# APPENDIX F. CASE JACKET

LAST NAME		FIRST NAME			DOCKET NUMBER		INTERVIEW NUMBER		
COURT DATE	PART	COURT STATUS	J/B/P	REFERRAL STATUS	RECOMMENDATION	DISPOSITION	JUDGE	CDR	COMMENTS

REFERRAL RECORD					
DATE	REFERRAL AGENCY	STATUS	REFERRAL CARD	INTERV. QUEST.	SENTENCE REPORT & PAGE 1

# APPENDIX G. INTERVIEW QUESTIONNAIRE

## BRONX SENTENCING PROJECT

### QUESTIONNAIRE

Name \_\_\_\_\_ DKT# \_\_\_\_\_ INT# \_\_\_\_\_

#### VERIFICATION

Dispositions

Family/Residence

Employment

#Inc.	Court

Phone \_\_\_\_\_  
 Field Ver. \_\_\_\_\_  
 Date Sent \_\_\_\_\_  
 Received \_\_\_\_\_

Phone \_\_\_\_\_  
 Field Ver. \_\_\_\_\_  
 Date Sent \_\_\_\_\_  
 Received \_\_\_\_\_  
 Letter \_\_\_\_\_

Updated Yellow Sheet

Program

Other:

#### VERIFICATION RESULTS

---



---



---

#### VERIFIED SCORE

Record \_\_\_\_\_  
 Family \_\_\_\_\_  
 Employment \_\_\_\_\_  
 Other \_\_\_\_\_  
 Total \_\_\_\_\_

#### COMPLETION DATES

Scheduled \_\_\_\_\_  
 Actual \_\_\_\_\_  
 Date Reviewed \_\_\_\_\_  
 Approved by: \_\_\_\_\_

#### REFERRAL

AGENCY	STATUS		INTAKE DATE
	Temp/Formal	Acc/Rej	
NC	Temp/Formal	Acc/Rej	
VOI	Temp/Formal	Acc/Rej	
Other :			

#### FOLLOW-UP REQUIRED

Letter \_\_\_\_\_ Date Due \_\_\_\_\_

IDENTIFYING DATA

Name \_\_\_\_\_ Age \_\_\_\_\_ Sex \_\_\_\_\_  
Birthdate \_\_\_\_\_ Birthplace \_\_\_\_\_ Years in NYC \_\_\_\_\_  
Ethnicity or Nationality \_\_\_\_\_ Religion \_\_\_\_\_  
Present Address \_\_\_\_\_ Phone \_\_\_\_\_

CRIMINAL RECORD

First Arrest \_\_\_\_\_ Currently on Probation, Parole, or NACC a/c \_\_\_\_\_  
From \_\_\_\_\_ To \_\_\_\_\_ Officer \_\_\_\_\_  
Agency \_\_\_\_\_  
Pending Cases: \_\_\_\_\_

Court	Charge	Arrest Dates	Status	Adj.
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

RESIDENTIAL HISTORY

From-To	Address	With Whom

FAMILY TIES

Are you single? \_\_\_\_\_ legally married \_\_\_\_\_ date of marriage \_\_\_\_\_

Separated \_\_\_\_\_ Widowed \_\_\_\_\_ Divorced \_\_\_\_\_ How long \_\_\_\_\_

Do you currently have a common law wife/husband? \_\_\_\_\_ How long \_\_\_\_\_

No. of children living with defendant: M \_\_\_\_\_ F \_\_\_\_\_ Ages: M \_\_\_\_\_ F \_\_\_\_\_

No. of children living elsewhere: M \_\_\_\_\_ F \_\_\_\_\_ Ages: M \_\_\_\_\_ F \_\_\_\_\_

Do you financially support anyone? \_\_\_\_\_

WHO?	RELATIONSHIP	HOW MUCH?	HOW OFTEN?	HOW LONG?

Can VERA contract some or all of these references?

Relationship	Name	Address	Phone	When home

**EMPLOYMENT**

Currently employed?

( ) Full Time

( ) Part Time

( ) Unemployed

DATES	FIRM AND CONTACT	ADDRESS	TYPE OF JOB	WAGE	REASON LEFT

Does your employer know about present arrest? \_\_\_\_\_ Can we mention arrest to employer? \_\_\_\_\_

If unemployed, any job prospects? \_\_\_\_\_

Firm \_\_\_\_\_ Address \_\_\_\_\_

Employer or Contact \_\_\_\_\_ Phone \_\_\_\_\_

Union Member \_\_\_\_\_ Name of Union \_\_\_\_\_ Local No. \_\_\_\_\_

Ledger No. \_\_\_\_\_ Contact \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

Are you caring for children at home? \_\_\_\_\_ Are you supported by your spouse? \_\_\_\_\_

Do you receive assistance? \_\_\_\_\_ Type of assistance: ( ) Welfare ( ) Other \_\_\_\_\_

\_\_\_\_\_ If on welfare, how long? \_\_\_\_\_ How much, semi-monthly? \_\_\_\_\_

Welfare Center and address \_\_\_\_\_

Caseworker and Unit \_\_\_\_\_ Phone \_\_\_\_\_

EMPLOYMENT (CONTD.)

If other assistance, please explain and describe below. Give references. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EDUCATION

Currently attending school? \_\_\_\_\_ Name of school \_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_  
Counselor or Contact \_\_\_\_\_  
Highest grade completed \_\_\_\_\_ Where \_\_\_\_\_ age left \_\_\_\_\_  
Type of Diploma or degree \_\_\_\_\_ Where \_\_\_\_\_ age received \_\_\_\_\_  
Any vocational or technical skills? \_\_\_\_\_

MILITARY STATUS

Ever been a member of Armed Services? \_\_\_\_\_ what branch? \_\_\_\_\_ When \_\_\_\_\_  
If no, why not? \_\_\_\_\_ Present classification \_\_\_\_\_  
\_\_\_\_\_ Discharge Status \_\_\_\_\_ Distinction \_\_\_\_\_

MEDICAL HISTORY

Any major diseases and/or operations in the past? \_\_\_\_\_

Disease/Operation	Hospital	When	Recovered?

Ever been treated for psychological problems? \_\_\_\_\_ What kind of  
problems? \_\_\_\_\_ Where treated? \_\_\_\_\_  
Did you find this treatment helpful? \_\_\_\_\_ Why or why not? \_\_\_\_\_  
\_\_\_\_\_



NARCOTICS HISTORY

Currently Using Drugs? \_\_\_\_\_ Ever used drugs? \_\_\_\_\_

Drugs Used	Dates-From/To	Most Ever Used	Least Used	Cost per Week
HEROIN				
COCAINE				

Ever stopped using drugs yourself or with a program? \_\_\_\_\_

WHERE	HOW	WHEN

Ever participated in a Narcotics Treatment Program? \_\_\_\_\_

PROGRAM AND CONTACT	DATES PARTICIPATED	REASON LEFT AND COMMENTS

If no prior participation, have you made any efforts to get into a Narcotics Treatment Program? \_\_\_\_\_

What Effort \_\_\_\_\_

Can we reach someone to verify your efforts? \_\_\_\_\_ Name and Address \_\_\_\_\_

Phone \_\_\_\_\_

Do any of your relatives (brother, sister, wife, etc.) use drugs? \_\_\_\_\_

Are they living with you now? \_\_\_\_\_ Do your close friends also use

drugs? \_\_\_\_\_ What program or type of program do you feel will be most

helpful in stopping drug use? \_\_\_\_\_

Why? \_\_\_\_\_

DEFENDANT'S STATEMENT ON ARREST AND COURT PROCEEDINGS

INTERVIEWER'S REMARKS ON CASE

CONSENT

I hereby consent to this interview, having knowledge of its purpose, I also consent to the persons listed above being contacted for the verification of my statements.

---

SIGNATURE

# APPENDIX H. SENTENCING RECOMMENDATION GUIDELINES

VERA INSTITUTE OF JUSTICE

BRONX SENTENCING PROJECT

## SENTENCING GUIDELINES

### FAMILY TIES

- +3 Lives with spouse.
- +2 Lives with children, with or without another family member.
- +2 Supports spouse or children, with or without supporting another family member.
- +2 Supports one or more family members voluntarily.
- +1 Supports a non-family person voluntarily.
- +1 Has been living with a family member other than spouse or children.
- +1 Has been living with a non-family person for the past six months.
- 0 None of the above.

NOTE: "Spouse" includes a legal spouse, or any person of the opposite sex with whom the defendant has lived in a conjugal relationship continuously for at least six months.

"Family member" includes any person related to the defendant by blood or adoption, including half and step relatives.

### EMPLOYMENT

- +4 Present job three months or more.
- +3 Present and prior jobs six months or more.
- +3 Person at home caring for children.
- +2 Present and prior jobs three months or more.
- +2 Present job less than three months.
- +2 Attending school, or receiving a pension or social security, or unemployed due to a medical disability.

- +2 Prior job three months or more which terminated upon arrest.
- +1 Receiving unemployment, or woman supported by husband.
- +1 Job commitment.
- 0 None of the above.

NOTE: In order to be able to add present and prior jobs, there must be no more than a two-week hiatus between each job.

"Present job" means one to which the defendant's employer has stated he can return if he is in custody during the pendency of the case.

PRIOR RECORD

- +4 No arrests ever.
- +2 No convictions within 8 years.

If at least one felony or misdemeanor conviction occurred within the last eight years, use the following chart:

Number of felonies in total prior record	Number of misdemeanors in total prior record					
	0	1	2	3	4 or more	At least 4, all within 12 years
0		0	-1	-2	-3	-4
1	-1	-1	-2	-3	-4	-4
2 or more	-3	-3	-4	-4	-4	-4
At least 2, both within 12 years	-4	-4	-4	-4	-4	-4

NOTE: If the arrest date of the last prior case occurred within 6 months of the conviction date of the present case, deduct 1 point from whatever score appears in the chart.

INSTRUCTIONS FOR APPLYING THE GUIDELINES

1. Unconditional Discharge: Except as stated in #3, infra, the defendant will be recommended for an unconditional discharge if he scores 10 or 11 points.
  
2. Conditional Discharge: Except as stated in #3, infra, the defendant will be recommended for a discharge on condition that he not commit an additional offense within one year (conditional discharge) if he scores 8 or 9 points.
  
3. Fine: If the defendant has been convicted of possession of a dangerous weapon or instrument and he scores 8 to 11 points, he may be recommended for a fine commensurate with his income in the discretion of the interviewer.
  
4. Supervised Release: It will be indicated that the defendant qualifies for a supervised release to the community if he scores 1 to 7 points inclusive.

(a) Custody Cases:

If, after so scoring, the defendant has been interviewed and accepted by either VOI or NC and a field verified residence has been established for him, then a recommendation will be made for a one-month adjournment and parole to the custody of Vera.

(b) Non-Custody Cases:

Any defendant who so scores after an interview and who, in the opinion of the interviewer, is appropriate for referral to VOI or NC should be referred on temporary status as soon thereafter as possible for the entire period of his R&S adjournment. If formal status is thereafter recommended by VOI or NC, a recommendation for adjournment and parole will be made for a three-month period.

(c) No Specific Recommendation:

If a case is rejected by VOI or NC, if we are unable to make a referral, or if there is some impediment to the release of the defendant from custody, such as a pending case in another county, a parole violation, a probation violation, etc., so state and indicate that we are therefore unable to make a specific sentence recommendation.

At the conclusion of the report, if there are no holds on the defendant, include the following statement:

"Accordingly, it is recommended that an I&S report be ordered to explore the possibility of placing the defendant on probation."

If the defendant was being supervised prior to his arrest on the instant case and there is a hold on him because of a warrant which has been lodged by the supervising agency, then a recommendation will be made that the defendant be given a conditional discharge for the specific purpose of enabling the supervising agency to resume supervision.

5. For Information Only:

If the defendant scores -5 to 0, the report will be submitted "For Information Only" which is tantamount to recommending prison. It is an indication that the defendant does not qualify for a non-prison sentence recommendation. This category should only be used when it has been determined that the defendant's verified score is below +1 or that even if the information given by the defendant were to be verified, he still would score below +1.

6. No Recommendation - Inability to Complete Verification:

Whenever the defendant would score for a non-prison sentence recommendation if the information given were

verified, but there is an inability to complete verification, which results in a verified score of less than +1, then the report will be submitted as "No Recommendation - Inability to Complete Verification."

7. Time Served:

This recommendation is rarely used and is reserved for cases involving unusual circumstances.

8. Discretion:

If the defendant scores 0 or 1, it is the interviewer's discretion whether to recommend a supervised release or FIO. If the defendant scores 7 or 8, it is the interviewer's discretion whether to recommend a supervised release or an unsupervised release. Whenever discretion is exercised, the interviewer should state specifically on the front of the interview questionnaire the reason(s) therefor.

Revised September, 1970

# APPENDIX I. PRESENTENCE REPORT

## VERA INSTITUTE OF JUSTICE BRONX SENTENCING PROJECT PRE-SENTENCE REPORT

SENTENCE RECOMMENDATION	
<input type="checkbox"/>	Unconditional Discharge
<input type="checkbox"/>	Conditional Discharge
<input type="checkbox"/>	Time Served
<input type="checkbox"/>	Fine
<input type="checkbox"/>	Supervised Release
<input type="checkbox"/>	a-Parole to Custody of _____ and adjourn to _____
<input type="checkbox"/>	b-No Specific Recommendation
<input type="checkbox"/>	For Information Only
<input type="checkbox"/>	No Recommendation-Inability to Complete Verification

Code \_\_\_\_\_  
Date \_\_\_\_\_, 19 \_\_\_\_\_

Docket No. \_\_\_\_\_ Part \_\_\_\_\_

Name \_\_\_\_\_ Age \_\_\_\_\_

Address \_\_\_\_\_

Convicted of \_\_\_\_\_ Days in Jail \_\_\_\_\_

Custody Status \_\_\_\_\_ Attorney \_\_\_\_\_

### EMPLOYMENT

From-To	Employer	Address	Position	Wkly Wage	Verifi- cation

### RESIDENCE AND FAMILY TIES

From-To	Address	With Whom	Verifi- cation

Marital Status: \_\_\_\_\_ Children and Ages \_\_\_\_\_

Persons Regularly Supported: \_\_\_\_\_

### ADDITIONAL INFORMATION AND REMARKS

Interview No. \_\_\_\_\_

Report Prepared by \_\_\_\_\_ Project Director \_\_\_\_\_



# APPENDIX J. COURT REPORT

VOLUNTEER OPPORTUNITIES, INC.  
578 East 161st Street, Bronx, New York 10456 (212) 665-7943

---

BRONX COMMUNITY COUNSELING PROJECT

COURT REPORT

---

DATE:

ENROLLEE:

DKT. #:

DATE ASSIGNED TO VOI:

DATE DUE IN COURT:

CONVICTED OF:

COURT PART:

---

ADDRESS:

CASE SUMMARY:

COUNSELING:

EMPLOYMENT:

LIVING SITUATION:

EVALUATION:

RECOMMENDATION:

By: \_\_\_\_\_  
VOLUNTEER OPPORTUNITIES, INC.

**APPENDIX K. SUPPLEMENTARY PRESENTENCE  
REPORT**

VERA INSTITUTE OF JUSTICE  
BRONX SENTENCING PROJECT

DATE \_\_\_\_\_ NAME \_\_\_\_\_

INT. # \_\_\_\_\_ DKT. # \_\_\_\_\_

SUPPLEMENTARY REPORT

Mr. \_\_\_\_\_ was convicted of \_\_\_\_\_  
\_\_\_\_\_ Section (s) \_\_\_\_\_

of the Penal Law on \_\_\_\_\_, 19\_\_. On \_\_\_\_\_, 19\_\_, his  
sentence was adjourned until \_\_\_\_\_, 19\_\_, and he was paroled  
to the Vera Institute of Justice so that he could participate in  
a program of counseling and service referrals. This report is  
submitted to bring the original VERA REPORT up to date, to describe  
the defendant's adjustment to the program to which he was referred,  
and to recommend a disposition of the case to the Court.

CHANGES SINCE ORIGINAL VERA REPORT:

PARTICIPATION IN REFERRAL PROGRAM:

EVALUATION AND RECOMMENDATION:

\_\_\_\_\_  
Report Prepared by

49

\_\_\_\_\_  
JOEL LIEBERMAN  
PROJECT DIRECTOR

# APPENDIX L. SHORT FORM PRESENTENCE REPORT (N.Y.S. DIVISION OF PROBATION)

DP 2.10 (9/71)

(Docket) (Indictment) # \_\_\_\_\_

## SHORT FORM PRESENTENCE REPORT

Defendant \_\_\_\_\_ Age \_\_\_\_\_ Date of Birth \_\_\_\_\_  
Last First MI Mo. Day Yr.

Convicted of \_\_\_\_\_ P.L. § \_\_\_\_\_

Custody Status: Bail (\$ \_\_\_\_\_) R.O.R.  Jail

Jail Time Credit \_\_\_\_\_ As of \_\_\_\_\_

Counsel \_\_\_\_\_

Original Charge \_\_\_\_\_ Date of Arrest \_\_\_\_\_

Other Charges Pending (including probation and parole violations):

<u>Charge</u>	<u>Court/Agency</u>	<u>Status</u>

Prior Record: Adult  Juvenile  None

Arrests \_\_\_\_\_ Convictions \_\_\_\_\_ JD/PINS ADJUDICATIONS \_\_\_\_\_  
No. No. No.

<u>Most Recent Other Offenses</u>	<u>Disposition</u>	<u>Date of Disp.</u>

*(Attach Fingerprint Sheet for Additional Items)*

Address \_\_\_\_\_  
Street Apt. No. City/Village/Borough

Time at Present Address \_\_\_\_\_ Addresses Past 2 Yrs. \_\_\_\_\_  
No.

Resides With \_\_\_\_\_ Marital Status \_\_\_\_\_

Number of Children \_\_\_\_\_ Age Range \_\_\_\_\_

Provides Support (or care) for \_\_\_\_\_

Occupation \_\_\_\_\_ Wage \$ \_\_\_\_\_  
Per Wk.

Present Employer \_\_\_\_\_ How Long \_\_\_\_\_

Last Two Years: Employers \_\_\_\_\_ Amount of Time Unemployed \_\_\_\_\_  
No. Yr. - Mo.

Other Source of Support \_\_\_\_\_

Education: Highest Grade \_\_\_\_\_ Special Training/Skill \_\_\_\_\_

Current Education/Vocation/Other Program \_\_\_\_\_

Military: Draft Status \_\_\_\_\_ Branch \_\_\_\_\_ Type of Dis. \_\_\_\_\_ Date \_\_\_\_\_

Youthful Offender: Eligible  Required

Certificate of Relief from Disabilities: Eligible  Ineligible

INFORMATION VERIFIED: Age \_\_\_\_\_ Other Charges Pending \_\_\_\_\_ Prior Record \_\_\_\_\_

Address \_\_\_\_\_ Present Employment \_\_\_\_\_ Education \_\_\_\_\_ Vocation/other Program \_\_\_\_\_

Military \_\_\_\_\_ Comments on Verification: \_\_\_\_\_

NAME: \_\_\_\_\_ (Docket) (Indictment) # \_\_\_\_\_

DESCRIPTION OF PRESENT OFFENSE

CODEFENDANTS

_____	_____
(Name)	(Status)
_____	_____

EVALUATION

RECOMMENDATIONS (OPTIONAL): Youthful Offender: Yes \_\_\_\_\_ No \_\_\_\_\_

Certificate of Relief From Disability: Grant \_\_\_\_\_ Refuse \_\_\_\_\_ Defer \_\_\_\_\_

SENTENCE: Unconditional Discharge  Conditional Discharge  Fine  Probation  Commitment

Special Conditions: \_\_\_\_\_

Date Prepared: \_\_\_\_\_

Signed: \_\_\_\_\_  
Probation Officer

Approved: \_\_\_\_\_  
Director/Supervisor

Probation Case #: \_\_\_\_\_

Sentence and Date: \_\_\_\_\_

# APPENDIX M. PRESENTENCE QUESTIONNAIRE (N.Y.S. DIVISION OF PROBATION)

DP 2.3 (9/71)

## DEFENDANT'S PRE-SENTENCE QUESTIONNAIRE

YOU ARE TO REPORT TO THE PROBATION OFFICE AS FOLLOWS:

\_\_\_\_\_

Date & Time

\_\_\_\_\_

Place

THE QUESTIONS BELOW ARE TO HELP IN MAKING A REPORT TO THE COURT FOR SENTENCE IN YOUR CASE. ANSWER THE QUESTIONS CAREFULLY AND TRUTHFULLY. THIS SHOULD BE DONE BEFORE YOUR INTERVIEW. IF YOU CANNOT ANSWER A QUESTION, SOMEONE WILL HELP YOU AT THE TIME OF THE INTERVIEW.

BRING THIS QUESTIONNAIRE, COMPLETED AS BEST YOU CAN, TO THE INTERVIEW. IF YOU HAVE ANY OF THE FOLLOWING ITEMS, PLEASE BRING THEM WITH YOU ALSO.

- |                                   |                                     |
|-----------------------------------|-------------------------------------|
| 1. BIRTH OR BAPTISMAL CERTIFICATE | 4. DRIVER'S LICENSE                 |
| 2. PROOF OF EMPLOYMENT            | 5. MILITARY DISCHARGE OR DRAFT CARD |
| 3. SOCIAL SECURITY CARD           |                                     |

NAME: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_/\_\_\_\_/\_\_\_\_ Age: \_\_\_\_

LAST FIRST M.I. Mo. Da. Yr.

ADDRESS: \_\_\_\_\_

NO. STREET APT. CITY/BOROUGH ZIP CODE

TELEPHONE NO.: \_\_\_\_\_ HOW LONG AT PRESENT ADDRESS: \_\_\_\_\_

PREVIOUS ADDRESS(ES) FOR PAST TWO YEARS (IF DIFFERENT FROM ABOVE):

STREET NO.	APT. NO.	CITY	FROM	TO
_____	_____	_____	Mo. Yr.	Mo. Yr.
_____	_____	_____	Mo. Yr.	Mo. Yr.
_____	_____	_____	Mo. Yr.	Mo. Yr.

HT. \_\_\_\_\_ WEIGHT \_\_\_\_\_ HAIR \_\_\_\_\_ EYES \_\_\_\_\_

DO YOU HAVE CHILDREN? YES  NO  NUMBER \_\_\_\_\_ AGE OF OLDEST \_\_\_\_\_ AGE OF YOUNGEST \_\_\_\_\_

FOR WHOM DO YOU PROVIDE SUPPORT:

- SELF  PARENT(S)  HUSBAND/WIFE  CHILD(REN) \_\_\_\_\_ OTHER: \_\_\_\_\_
- No.

HAVE YOU EVER BEEN IN FAMILY OR CHILDREN'S COURT? \_\_\_\_\_ YEAR \_\_\_\_\_ PLACE \_\_\_\_\_

HIGHEST LEVEL (GRADE) OF EDUCATION: \_\_\_\_\_ WHEN COMPLETED? \_\_\_\_\_

LAST SCHOOL OR PROGRAM ATTENDED: \_\_\_\_\_ YEAR: \_\_\_\_\_

ARE YOU EMPLOYED? YES  NO  TYPE OF WORK: \_\_\_\_\_ EARNINGS: \$ \_\_\_\_\_

Per Week

PRESENT EMPLOYER: \_\_\_\_\_ HOW LONG? \_\_\_\_\_

NAME ADDRESS

NUMBER OF DIFFERENT EMPLOYERS IN PAST TWO YEARS: \_\_\_\_\_ SOC. SEC. # \_\_\_\_\_

DOES YOUR EMPLOYER KNOW ABOUT PRESENT ARREST? YES  NO

DO YOU RECEIVE ANY INCOME OTHER THAN FROM EMPLOYMENT? YES  NO

IF YES, GIVE SOURCE AND AMOUNT. (IF WELFARE, GIVE WELFARE DEPT. OR CENTER ADDRESS):

\_\_\_\_\_

HAVE YOU EVER HAD ANY SERIOUS MENTAL OR PHYSICAL HEALTH PROBLEMS? YES  NO

IF YES, DESCRIBE: \_\_\_\_\_

-over-

DO YOU HAVE ANY ILLNESS OR INJURY NOW? YES  NO

IF YES, DESCRIBE: \_\_\_\_\_

HAVE YOU EVER USED DRUGS? YES  NO

DO YOU USE MARIJUANA OR DRUGS NOW? YES  NO

EVER IN MILITARY SERVICE? YES  NO  IF YES, BRANCH/SERVICE #: \_\_\_\_\_

DATE AND TYPE OF DISCHARGE: \_\_\_\_\_ DRAFT STATUS: \_\_\_\_\_

PRIOR ARREST RECORD: YES  NO

<u>YEAR</u>	<u>PLACE</u>	<u>OFFENSE</u>	<u>SENTENCE</u>
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ARE YOU UNDER ANY COURT ORDER? YES  NO  (WHERE? \_\_\_\_\_)

DO YOU HAVE ANY OTHER CRIMINAL CHARGES PENDING NOW? YES  NO

COURT: \_\_\_\_\_ CHARGE: \_\_\_\_\_  
-----

ANY COMMENTS YOU WOULD LIKE TO MAKE ABOUT YOURSELF OR YOUR CASE:

\_\_\_\_\_  
Defendant's Signature

U.S. DEPARTMENT OF JUSTICE  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION  
WASHINGTON, D.C. 20530

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