THE BRONX SENTENCING PROJECT

of the Vera Institute of Justice

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

Joel M. Lieberman*
S. Andrew Schaffer**
John M. Martin***

*B.S. Hunter College in the Bronx, City University of New York (1963); J.D. St. John's University School of Law (1966) Director, Bronx Sentencing Project.

**B.A. Harvard College (1963);LL.B. Harvard Law School (1967) Associate Director, Vera Institute of Justice.

***Professor, Department of Sociology and Anthropology; Chairman Institute for Social Research, Fordham University.

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 on Law Enforcement and Criminal Justice (grant #NI-036) in August 1970 covering the project's operations from July 1968 - February 1969; and second, project records for the period after February 1969. The authors gratefully acknowledge the invaluable 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.

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I. INTRODUCTION

In theory there are several alternatives open to a New York judge in the sentencing of a misdemeanant. He may choose among an unconditional discharge, a conditional discharge, probation, a fine or imprisonment.[1] 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".[2] Since the Office of Probation is able to investigate only a small percentage of the adult[3] misdemeanant cases in the New York City Criminal Court, more than 80% of these persons become theoretically ineligible for sentences of probation and conditional discharge.[4]

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[1] New York Penal Law §60.10

[2] New York Penal Law §§65.00, 65.05. (Emphasis added).

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

[4] 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,[4a] mitigating or special circumstances often do not affect the sentencing decision.

The choice between the remaining non-prison 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 [5] and suggested that

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[4a] But see infra note 43.

[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 misdemeanant system, where millions of cases are disposed of each year and relatively few presentence investigations made." Task Force Report: Corrections, 19.

this contributed to the unwillingness of judges in many cases to consider alternatives to imprisonment.[6] 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".[7] 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 misdemeanant sentencing be filled by gathering, verifying and presenting certain objective data which appear to be important to sentencing.[8]

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. Since July, 1968 the project has been preparing such reports in adult arrest cases in the Bronx Criminal Court where a full presentence investigation by the Office of Probation has not been ordered.

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[6] Id. at 78-79

[7] Id. at 18

[8] "Particularly in many misdemeanant 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." TFR:Corrections, 19.

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 thirty minute interviews with convicted misdemeanants using a structured interview questionnaire and verified the information by telephone or through relatives in court and by referring to court records. A one-page report was then prepared which detailed 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 preconceived 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 non-prison dispositions as a result of the project's recommendations would not result in an increase in the rate of recidivism.

The project has 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 and is 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, has provided the project with valuable information for research purposes. The Police Department--especially its Bureau of Criminal Identification (BCI)--has continuously provided criminal record information on all

defendant for purposes of preparing both presentence reports and follow-up studies of recidivism. The Mayor's Criminal Justice Coordinating Council has sponsored the project, provided funding and facilitated coordination with the many agencies and persons involved in the criminal justice system.

In describing the project's operation the emphasis will be upon current operating procedures. However, attention will also be given to the evolution of various functions and procedures where it is deemed relevant.

B. INTAKE

The Bronx Criminal Court is one of five separate county[9] courts which together 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.[10]

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.[10a] On a "normal day" the Bronx Criminal Court has at least 700 non-traffic cases scheduled for post-arraignment action.

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

[10] As of July 1, 1970 almost all traffic cases were transferred from the jurisdiction of the Criminal Court to administrative agencies.

[10a] The breakdown of these cases is as follows:

Adult arrests	33,072
Youth arrests	11,866
Summary offenses	40,633
	85,633

Of the 33,072 adult arrest cases, only 6,070 resulted in conviction.

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 two-day adjournment between conviction and sentence[11] ("waiver case"); (2) after an adjournment to enable the Office of Probation to conduct a court ordered presentence investigation ("I&S case"); or (3) after an adjournment ordered solely for the purpose of receiving updated criminal record information ("R&S case"). During the year 1970 4,111 of the 6,070 adult arrest convictions fell within the project's general eligibility criteria (discussed below in Section C) of which 2,128 (51.8%) were waiver cases, 1,028 (25.0%) were I&S cases and 955 (23.2%) were R&S cases.

Originally, the project attempted to service waiver and R&S cases in the adult arrest parts[12] of the court. The advent

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[11] New York Code of Criminal Procedure §472.

[12] 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.

of the project's referral system, however, made it impossible to complete cases on the same day as conviction thus compelling an end to the acceptance of waiver cases. Since that time the project has attempted to dissuade Legal Aid attorneys from waiving the right to an adjournment between conviction and sentencing since research has disclosed that project presentence reports tend to benefit defendants in Legal Aid cases. This effort has not been 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 does not handle I&S cases since they represent judicial requests to the Office of Probation to conduct a presentence investigation.

Thus it is from the pool of R&S cases that the project draws its workload. It should be noted that the method by which the project obtains its cases differs 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 conducts interviews and submits presentence reports in all R&S cases which fall within its eligibility criteria and also whenever a judge specifically requests a "Vera Report", irrespective of eligibility criteria.

All convicted defendants whose cases are adjourned prior to sentencing are 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, negotiated with success for an office adjacent to the fingerprint room. This has 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 apparently eligible defendants are brought to the project's office by a court officer or police officer where a staff member determines their eligibility and conducts 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 was comparatively high. Convictions for other misdemeanors such as those found in the Vehicle and Traffic Law, Alcoholic Beveral Control Law, Labor Law, etc., were excluded since they rarely resulted in prison sentences.

In July, 1970 the Bronx Criminal Crout 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 from a weekly average of 19 interviews.

Under New York State Law[13] 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 the statute.[14] If the defendant has been found to be

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[13] New York Mental Hygiene Law (MHL) Article 9.

[14] MHL §201

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.[15] Since there is no discretion with respect to sentencing the project normally does not handle such cases.[16]

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

(1) Any Penal Law misdemeanor conviction except one involving gambling or prostitution in one of the adult arrest parts of the court;

(2) Adjournment for Record and Sentencing (R&S);

(3) No final determination that the defendant is an addict within the meaning of the Mental Hygiene Law.

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[15] Up to 60 months at the court's discretion if the defendant has been convicted of a felony. MHL §208.

[16] 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.

D. IDENTIFICATION [17]

The term "identification" refers to the process by which the project records initial information regarding cases which fall within its eligibility criteria.

(1) Orientation

When the defendant is brought to the project's office after having been fingerprinted, a staff member explains the nature and purpose of the project, obtains the defendant's consent to be interviewed, and gives him a one-page description of the project. (Appendix A-1.)

(2) Custody Status

It is then necessary to ascertain whether the defendant has been remanded to custody or is 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.

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[17] Several forms and documents are employed by the project in identifying a case. They are contained in the Appendix.

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 has proven 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 stamps "VERA REPORT" on the Commitment Order which accompanies them back to the institution.[18]

Other detained defendants (males under 21 years and females) comprise a very small percentage of the eligible caseload and are interviewed in the courthouse since they are housed too far from the project's office and are 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[19] takes custody of those defendants who must be interviewed in the project's offices. The arresting officer is

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[18]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.

[19]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.

then free to return to his tour of duty. When it is not possible to interview this special category of detained defendants on the day they are convicted--usually because it is too late in the day--their names are listed on a Recall Sheet (Appendix A-4) which is signed by a court clerk and forwarded to the Department of Correction requesting their production the following day solely for the purposes of an interview by the project. No formal court appearances are 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 readjourned to the original sentencing date.

Defendants not in custody are usually interviewed immediately after identification. Experience has shown that if an appointment is made for an interview at a later date many defendants fail to return to the project's office until their next scheduled court appearance necessitating another adjournment if an interview is to be conducted and a report submitted. For those defendants who are employed, a deferred interview date means another missed work day--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. When the defendant is brought to the project's office the escorting officer brings the court papers with him and he is given a receipt which he returns to the appropriate court clerk. A staff member stamps "VERA REPORT" on the front of the court papers. After the case has been identified and the data coded by the research staff, the papers are returned to the clerk's office and the receipt is retrieved. In order to be able to record the necessary information about each case it is extremely important to have permission to retain court papers for a few days.

When the process of identification has been completed an identifying data sheet (Appendix A-5) and copies of the arraignment yellow sheet and complaint are placed in a case jacket (Appendix A-6). The case is then ready to be interviewed. The number of cases identified varies 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 determine by the defendant's custody status, sex and age. A normal interview lasts approximately 30-40 minutes. The questionnaire (Appendix A7-13) is structured to permit all relevant information to be elicited in this period of time. The interviewer explains

to the defendant that the purpose of the interview is to provide the judge with verified information regarding his family ties, residence, employment and prior criminal record so that his sentence will not be based solely on the current offense and an incomplete prior criminal record. He also tells the defendant that his statments will be verified and that the dispositions of his prior arrests will be obtained if they are missing on his criminal record. The interviewer stresses that the project attempts to bring out the positive elements in the defendant's social history with a view toward recommending a non-prison sentence or minimizing the length of any prison sentence.

Project contact with the defendant usually occurs after he has 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 find a deep sense of frustration among defendants toward the close of their cases. Accordingly, it is important to convey a feeling to the defendant that the project seeks to help him. The interviewers explain the possible sentences to him and indicate which one he is likely to receive provided all relevant interview information can be verified. At the completion of the interview the process of verification begins.

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 is possible to speak with a person who is familiar with the defendant's family ties and residence. Usually employment can also be verified by telephone. If the defendant's employer knows that he has been arrested then the purpose of the call can be stated. However, when the defendant does not want his employer to know that he has been arrested the interviewer will normally state that he is calling to make a credit check on the defendant.

(2) Friends or Relatives in Court - Friends or relatives of the defendant often appear in court with him and usually accompany him to the project's office. They often verify the defendant's statements immediately after the interview.

(3) Mail - Sometimes employers are reluctant to disclose information about the defendant over the phone. In such cases, a form letter is sent requesting verification of employment information.

(4) Field Verification - When it is not possible to effectuate verification by the first three methods a field verifier visits the home of the defendant, a friend or relative and/or places of employment. In addition, before a defendant can be recommended for a sentence involving supervised release a field verified residence must be established for him. The field verifier must have a thorough knowledge of the South Bronx, an ability to gain access to the homes of those he will be visiting and to obtain the requisite information; in addition he must be able to determine whether a person is being truthful. A knowledge of Spanish is extremely valuable although it is possible to complete a field verification by using a bilingual neighbor. Since the number of field verifications is not sufficient to require a full-time staff person the project has had considerable difficulty in keeping this position filled. Experience has shown that ex-offenders who are of average intelligence and are otherwise apparently "making it" in the outside world are best qualified to do the job. The problem is that they must 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 refers 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 tries 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 Updated 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 has arranged with the Police Department's BCI to receive a copy of the UYS for all cases which it has identified. Interviewers search the records in the Bronx Criminal Court clerk's office to obtain dispositions for all previous Bronx arrests. Dispositions for previous felony arrests which have not been reduced to misdemeanors are obtained from the clerk's office in Bronx Supreme Court which is a short distance away. If a personal investigation is not possible the information can usually be obtained by telephone or by mail. Dispositions of non-Bronx arrests within New York City are obtained by telephone from various court personnel or from staff members of other projects operated by Vera.

When it is not possible to obtain dispositions by telephone a worksheet is used accompanied by a covering letter requesting the information. This occurs mostly in the case of non-New York City arrests. Since the project is not an official arm of the court and is not widely known outside New York City, there is a reluctance to disclose criminal record information over the phone. Most written requests, however, are 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 has 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 has obtained all possible information concerning the defendant's prior record, he enters it on the project copy of the UYS which is attached to the presentence report. In addition, xerox copies of each UYS are now given to the officer in the fingerprint room who forwards 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 ("I&S 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 I&S reports was analyzed to identify which factors were significantly associated with a non-prison sentence.[20] In general, this analysis suggested primary reliance on prior record, employment and family relationships.

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[20] 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.

Other factors tested, such as education, psychological or medical factors, and military record, either appeared not significant or the information 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 Prpbation and the sentences imposed by the courts.[21] The results were as follows:

	Vera Recommendation	Office of Probation Recommendation	Court Sentence
Unconditional Discharge	29 (23.7%)	28 (32.5%)	23 (26.7%)
Probation	44 (51.2%)	44 (51.2%)	44 (51.2%)
No Recommendation (Prison)	13 (15.1%)	14 (16.3%)	19 (22.0%)
	86 (100%)	86 (100%)	86 (100%)

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:

UNCONDITIONAL DISCHARGE

	Sentence Recommended	Recommended Sentence Accepted by Court	Acceptance Rate
Vera	29	20	69%
Office of Probation	28	22	78%

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[21] In allocating Office of Probation recommendations and actual sentences, "conditional discharge" was treated as "probation" if there was an indication from the I&S report that a specific condition recognizing the need for community supervision was imposed. Otherwise, the allocation was to "unconditional discharge."

PROBATION

	Sentence Recommended	Recommended Sentence Accepted by Court.	Acceptance Rate
Vera	44	33	75%
Office of Probation	44	39	88%

PRISON

Vera	13[22]	11	85%
Office of Probation	14	11	79%

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

	Non-Prison Sentence Recommended	Non-Prison Sentence Recommendation Accepted by Court	Acceptance Rate
Vera	73	67	91.8%
Probation	72	66	91.7%

The scoring table, when applied to a sample of cases in which I&S reports had been submitted, agreed with actual sentencing decisions in approximately seven cases out of ten

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

and agreed with non-prison sentences in approximately nine cases out of ten. The table thus represented a reliable guide to the sentence a defendant would have been likely to receive based upon a full I&S report.

The guidelines which are currently in use (Appendix A-14-18) contain modifications based upon 2-1/2 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 for Law Enforcement and Criminal Justice on the project's first eight months of operation.[23] When the interviewer has completed verification of all relevant facts a score is computed from the recommendation guidelines. When the interviewer exercises discretion as authorized by the guidelines the reasons for doing so are indicated in the case file for future analysis of the guidelines. If the interviewer wishes to deviate from the guidelines because of unusual or extenuating circumstances a conference is 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

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[23] The results of the research will be discussed below.

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. SUPVERVISED RELEASE - A NEW KIND OF DISPOSITION

Depending upon how the defendant scores after applying the recommendation guidelines one of three categories of recommendation is made: unsupervised release; supervised release; for information only. This section deals only with those cases which score 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 non-prison 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 non-prison 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 an I&S 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 re-sentencing, 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 non-residential 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 one to six months during which 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 date certain rather than the mere possibility of resentencing in a closed one 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--and one receptive to the idea of detailed analysis and able to provide the necessary data on an offender's participation. The VOI program includes group counseling, individual counseling, housing, health, employment and training referrals, tutoring, and recreational programs. Group counseling is led by trained para-professionals who themselves had been involved for many years in the subculture of crime, drugs, and poverty and are able to serve as role models for the offenders.

When a defendant scores for a supervised release, the VOI program is explained to him and he is 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 is out on bail or personal recognizance pending sentence, he may immediately enter the program on a two-way trial basis as a "temporary" enrollee. On the sentencing date, qualified offenders are recommended for an adjournment of sentencing. Those who have been satisfactory "temporary" enrollees are recommended for an adjournment of several months while those who were in detention between the dates of conviction and sentencing are recommended for a one month adjournment. At the end of the prescribed period of supervised release, participants are 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 non-prison sentences during the ten month period of March to December, 1970 was 57 percent (333 of 580) as compared with 44 percent during the project's first eight months (June 1968 to February 1969). Among the 333 non-prison cases 125 were placed in the VOI program.

When the project began making referrals to VOI it took few precautions 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 appears at the project's offices to meet and escort every defendant who has been referred to VOI. The importance of this simple task cannot be over-emphasized. First, the risk of the defendant not arriving at VOI is eliminated. Secondly, the fact that someone appears to escort the defendant to VOI gives him the feeling that a genuine effort is being made to help him. Continuous physical contact with the defendant from the courthouse right up to his orientation at VOI serves to increase his interest in the program and his subsequent participation therein.

However, not all defendants who qualify for supervised release can be referred to VOI. Some do not reside within the geographical boundaries prescribed by VOI; for others the project is unable to effectuate a positive field verification of their residence (a prerequisite for formal admission to VOI); some are too heavily addicted to drugs to be able to participate in a non-residential community counseling program; others are simply not interested.

The project's narcotics coordinator assists defendants who are seeking to treat and cure drug problems. He is in close contact with various addiction treatment facilities and can normally have someone admitted to an appropriate program on the same day or within 24 hours. He is an ex-offender with a

thorough understanding of the problems of addiction, having previously used drugs for several years. His function is to determine the extent of a defendant's drug problem and to select and recommend an appropriate method of treatment. No defendant is ever referred to a program unless its requirements have been explained to him and he has agreed to comply with them. The narcotics coordinator maintains contact with the defendant and any program to which he is referred during the period of his adjournment and prepares or obtains progress reports for submission to the court on the next adjourned date. In addition, he provides one-to-one counseling for defendants awaiting admission or not referred to a formal treatment program.

Although a defendant may qualify for a supervised release, the project is not always able to effectuate an appropriate referral. In such a case the project's report indicates an inability to make a specific sentence recommendation and usually recommends that the court order an I&S report to explore the possibility of placing the defendant on probation. If the defendant is being held 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 recommends a sentence of specific conditional discharge back to the agency in question so that supervision of the

defendant can resume.[24]

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 non-prison sentences for satisfactory participation must keep the court informed of a participant's progress. Thus, a court report is 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.[25] When the defendant is to be favorably terminated the original project interviewer prepares a Supplementary Presentence Report[26], usually containing a sentence recommendation of conditional discharge, to which the VOI Court Report is attached. When the defendant is to be unfavorably terminated, the interviewer, after conferring with a VOI representative, prepares a Supplementary Report containing a recommendation for

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[24] 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.

[25] A sample VOI court report is contained in Appendix A-20.

[26] A sample Supplementary Report is contained in Appendix A-21.

a different referral or a statement that no further non-prison recommendation can be made. When the defendant is to be continued in the program, the VOI Court Report requesting a further adjournment is submitted by itself. When defendants are referred to other service-providing agencies the agencies normally submit a progress report at each scheduled court appearance which contains a recommendation for termination or continuation in the program. When a defendant has made sufficient progress in any program involving supervised release and a favorable report is submitted, the judge will almost invariably grant a non-prison sentence--usually a conditional discharge. Conversely, if a defendant does not progress sufficiently he may receive a harsher sentence than he originally would have received. Based on a tacit understanding between the project and the court these "ground rules" are explained to the defendant prior to effectuating a referral and usually by the judge again at the first sentencing appearance if the case is to be adjourned and the defendant released on his own recognizance. Without such ground rules it would be virtually impossible to gain any kind of credibility with the defendants or to be able to effectively supervise and help them, since a prison sentence after compliance with the supervising agency's requirements would be 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 based upon his criminal record prior to the period of adjournment, the judge (who was not the same one who had granted the adjournment) sentenced the defendant to six 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 and 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 non-prison sentences of conditional or unconditional discharge. An I&S

report was ordered for the remaining two participants who ultimately received sentences of conditional discharge and fine.

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

Many defendants for whom an unfavorable report is to be submitted do not voluntarily appear in court on their next scheduled date and a bench warrant is issued for their arrest. It then becomes 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 are only returned to court if they are subsequently arrested for another crime.[27]

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[27]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 has been 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 six months for defendants who were initially thought to be suitable for supervised release. It was discovered (especially at VOI) that the drop-out 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 has apparently had a faborable effect upon participation thereby lessening the drop-out rate.

Originally the project attempted to refer to VOI all defendants who qualified for a supervised relase, who were not hard-core addicts[28] and who had no impediment to their being released such as a warrant from another court. 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 which the defendant is 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 is extremely important in evaluating defendants who are in custody at the time of interview since they probably will not be released

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[28] "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.

at sentencing unless the project makes a recommendation for supervised relase. On the other hand, in cases of defendants not in custody at the time of interview a recommendation for supervised release will only require 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% (62 of 107); since September, the percentage has dropped to 45% (47 of 104).

K. FINAL SENTENCING RECOMMENDATIONS

Considerable attention has been devoted to the category of supervised release recommendations since for the most part they did not exist prior to the inception of the project. However, many defendants do not receive a recommendation for supervised release and are usually sentenced at the first appearance after conviction. For those defendants who score highest on the guidelines a recommendation for a sentence involving unsupervised release[29] is made.

When a defendant does not qualify for any non-prison sentence recommendation, the presentence report is submitted "For Information Only" (FIO) without any sentence recommendation. FIO, however, has come to be regarded by most judges as tantamount to a recommendation for prison.[30]

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[29] Unconditional Discharge, Conditional Discharge or Fine.

[30] At the present time prison sentences are meted out to almost 90% of the defendants whose reports are submitted "For Information Only."

In certain cases a defendant would qualify for a non-prison sentence recommendation if it were possible to verify his social history information but because of circumstances beyond its control the project is unable to complete verification and, therefore, unable to make a non-prison recommendation. This type of case is to be differentiated from an FIO case--where whether or not there has been verification of all information about a defendant he does not qualify for a non-prison 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 policies on the part 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 consists of a part-time research director and two part-time research assistants, all of whom are doctoral students in Sociology, and a research consultant who is a Ph.D. and Professor of Sociology.

The project's research staff records pertinent information from the defendant's court papers in two stages by means of a numerical coding system which is geared to a fortran computer program. The first stage occurs immediately after identification. The items recorded at this time include general information about the defendant[31], his criminal identification numbers[32], any social history information available from the Office of Probation "ROR" reports[33], information concerning the court proceedings[34], and available information concerning the defendant's prior criminal record.[35]

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[31] Names, aliases, addresses, sex, ethnicity, etc.

[32] 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.

[33] 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.

[34] 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.

[35] Three elements of prior record are 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 dispositions of prior cases are recorded at a subsequent time.

The court papers are then returned to the proper court file and the receipt which had been put in the file in place of the papers is retrieved. In this way both the court and the project know the location of a defendant's court papers at all times. The research staff usually take 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 occurs after sentencing. At this stage data elicited from the defendant during the presentence interview are 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 this section, so that its use as part of the sentencing guidelines is currently suspended pending revision by the research staff. Also recorded at this point are the dispositions of cases appearing on the defendant's prior record and information concerning the sentence. The first aim of the research has been to evaluate the effectiveness of the project in terms of three criteria or hypotheses: (1) among cases serviced by the project, the actual sentences imposed by the judges correlate closely with the project's recommendations; (2) the presence of the project's presentence report results in a rate of prison sentences which is significantly lower than the rate for comparable cases in which no presentence report is

prepared; and (3) the use of the project's presentence reports has not resulted in undue added risk of recidivism. The second aim of the research is 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 is 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 are all monitored to determine changes occuring during and after the referral process. In the case of VOI, part of the research has been undertaken by the referral agency itself, under its self-evaluation budget line.

The work of the research staff has also benefitted the project in its dealings with related agencies. The Office of Probation is occasionally asked by the court to prepare a traditional long-form presentence report after the project has submitted its report. On a limited basis the research staff is 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 are undecided whether their best legal strategy is 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 non-prison sentence recommendations according to the project's guidelines.

M. ADMINISTRATION AND STAFF

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

In addition to general supervision, the director coordinates the operational in-court procedures with those of the research staff. He deals with the central office of the Vera Institute of Justice and the Sentencing Committee of the Mayor's Criminal Justice Coordinating Council and is responsible for coordinating the project's activities with those of Volunteer Opportunities, Inc., and other agencies to which referrals are made. He also has 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 is the project's grass-roots public relations person. He acts as liaison on a day-to-day basis with court and other agency personnel and is the person through whom defendants and others usually have their initial contact with the project. He is 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 presents all reports to court and where necessary makes formal court appearances. The job of administrative assistant requires above average intelligence, attention to detail and the ability to work under time pressure. The project has found that a college graduate is best for this position.

The role of interviewer, of whom there are currently three, has been defined for the most part in the section on interviewing. They often maintain 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 is not recommended as part of the sentence. The job of interviewer requires an ability to relate to people--especially those who are in trouble and for the most part impoverished. It also requires the ability to

strike a balance between concern for the defendant and objectivity since it is obviously impossible to recommend non-prison 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 is filled by an ex-addict who has spent considerable time in prison and is therefore able to identify closely with the people he attempts to help. Experience has shown that defendants are 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 differ substantially from traditional reports submitted by most probation agencies.[36] In place of a relatively long narrative report containing a psychological-psychiatric orientation, the Vera report is limited to a brief compilation of behavioral variables such as family ties, residence, employment, and criminal record. The information is verified whenever possible and unverified information is clearly labeled as such. Hearsay and speculation are almost entirely omitted. The report goes 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

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[36] 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.

the individual factors had had with respect to sentencing patterns and subsequent recidivism. Although it cannot fairly be claimed that the present manner in which the project derives its sentence recommendations has eliminated all arbitrariness by the investigating agency, it has eliminated almost all subjectivity by investigators and more importantly, has perhaps made more visible the cause and effect of the sentencing recommendation process.

(2) How has the court reacted to it?

In general there has been a high degree of correspondence between the sentence recommendations contained in the project's reports and the court's actual sentences.[37] The court meted out a non-prison sentence in 83% of the cases in which such a sentence was recommended.[38] Prison sentences were meted out in 87% of the cases in which the project was unable to recommend a non-prison sentence.[39] The overall rate of agreement between recommendation and sentence was 86 percent.

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[37] In July of 1970 the project submitted to the National Institute for 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 eight 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 six months time at risk chosen for analysis of recidivism.

[38] Non-prison sentence recommendations made by the project during the first eight 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.

[39] As explained previously when the project was unable to recommend a non-prison sentence the report was submitted "For Information Only." These cases are referred to as FIO cases or as "prison recommendation" cases.

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 has in fact been 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 have been produced by an altogether different process--namely, that the project's recommendation provided the court with a peg to hand its hat on. Should the peg break and the defendant who has been

set free commit a serious new crime, the project it is argued, would have to bear or at least share the blame. The project has not undertaken 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 non-prison 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[40]--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.

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[40] A general conditional discharge is granted on the condition that the offender not commit an additional crime for one year. If the condition is violated the theoretical sanction is re-sentencing. However, this rarely if ever occurs and thus a general conditional discharge becomes the functional equivalent of an unconditional discharge.

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 effect 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 which had already been included in the weighting process which produced his sentencing recommendation.[41] 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[42] in an attempt to find influences on sentencing other than those in the social history of the defendant.

In the first category it was found that the court attached a greater significance to a defendant's employment status than did

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[41] Marital status, occupational status and prior criminal record.

[42] 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.

the original sentencing guidelines. Thus while the court agreed with non-prison 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 import 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 six months, the court agreed with "prison recommendations" 94 percent of the time but agreed with non-prison recommendations only 46 percent of the time. In addition, offenders in this category recidivated at a rate of 53% as compared with the overall rate of recidivism of 31% for all project serviced defendants. Both factors suggested that the item be incorporated into the guidelines. This also 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 non-prison 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 non-prison recommendation was withheld the court imposed a prison sentence 94 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 those in which the offender was unable to qualify for a non-prison 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 for.

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 useable 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.[43] The adjournment is often obtained by non-appearance 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 one who is able to hire private counsel is substantially more likely than one who is not to avoid a prison sentence in precisely those cases in which such a sentence objectively seems most probable.

The second significant court variable was whether the offender was in custody or not on the day of sentencing. Recommendations for non-prison sentences were accepted by the court in 90 percent of the non-custody cases but in only 68 percent of the custody cases. Similarly, "prison recommendations" were followed in 95 percent of the custody cases, but only 66 percent of the non-custody cases. Once again the separation into recommendation categories should have controlled in the aggregate for differences in social history suggesting that detention status had a strong independent influence on sentencing.[44]

[43]The recent institution in the Bronx Criminal Court of several 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.

[44]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 non-prison 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 non-prison 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 re-arrest rate during a subsequent six month time-at-risk[45] was 18 percent (19 of 108) compared with a similar rate of 16 percent (15 of 95) for those offenders receiving non-prison 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 sub-sample, receiving non-prison sentences at identical rates of 37 percent.

Another important but more speculative statistic concerns the hypothetical recidivism rate if judges had followed all of

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[45] For research purposes recidivism was defined as at least one rearrest for a fingerprintable crime (felony or serious misdemeanor) during a six 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 was 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.

the project's non-prison recommendations.[46] 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

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[46] 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.

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 qualify for a supervised release, but in which there is an inability to make a specific sentence recommendation, have 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, non-official status?

The most obvious effect of the project has been the enlargement of the class of defendant receiving presentence reports. More significant than any increase in absolute numbers has been the change in the social characteristics of defendants making up this class. Prior to the advent of the project, the only misdemeanants receiving 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 an I&S report. From all appearances, the judges ordered I&S reports only when they felt that an offender was especially worthy of lenidency. As can be seen from the following table, I&S 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 I&S cases had no prior arrest record, and 80 percent of them had no prior convictions. I&S 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 I&S 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 I&S cases to have had a prior arrest within the previous six months.

COMPARISON OF SELECTED VARIABLES FOR THREE GROUPS OF OFFENDERS

VARIABLE	PROJECT CASES	I&S CASES	NO REPORT CASES
ALL ARREST IN PRIOR RECORD:			
Percent of arrests	.24	.53	.26
1-2 arrests	.27	.34	.23
3-4 arrests	.24	.07	.21
5 or more arrests	.25	.07	.29
ALL CONVICTIONS IN PRIOR RECORD:			
Percent no convictions	.42	.80	.40
1-2 convictions	.33	.16	.31
3-4 convictions	.12	---	.14
5 or more convictions	.13	.03	.16
TYPE OF COUNSEL OTHER THAN AT ARRAIGNMENT:			
Percent Legal Aid	.65	.40	.62
Private attorney	.20	.45	.24
No data	.16	.15	.14
CUSTODY STATUS ON DAY OF SENTENCING:			
Percent in custody	.57	.37	.61
Not in custody	.43	.63	.39
TIME SINCE LAST PRIOR ARREST:			
Less than 6 months	.23	.10	.19
6 Months to 1 Year	.27	.19	.32

VARIABLE	PROJECT CASES	I&S CASES	NO REPORT CASES
TIME SINCE LAST PRIOR ARREST (cont'd)			
2 to 5 Years	.16	.11	.15
More than 5 Years	.08	.07	.07
No prior arrests	.24	.53	.26
No data	.02	---	.02

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 non-prison recommendations (see Section A(2))above. 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 non-prison 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 seems to have brought a new type of worker into the court process--one who is relatively young, non-civil service, college educated, and perhaps most significant, not expecting to spend the remainder of his working career in his present capacity nor one necessarily akin to it. There are some indications that this has 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 is 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. The 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 an intermeddler in the sentencing decision process. Except in cases of 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 have been observed. The first finds the court literally imploring the project to provide it with a non-prison alternative for a particular offender. The second finds the court severely castigating an offender who has 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 sources 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 makes much of the debate on this point moot. Since the information content of the report is limited to verified information with respect to a few behavioral variables, the problem of overinclusiveness is eliminated. The substantial elimination of hearsay reduces concern over witness credibility judgments made by the investigator and his ability to evaluate statements with respect to the offenders' attitudes or other data. And finally, the short-form report reduces the phonomenon of an investigator taking other social agencies' data and relying on it as gospel.

From its inception in July 1968 the Bronx Sentencing Project has consistently provided defense counsel with a copy of its report to the court. In over 2,000 cases there has never been an objection raised against 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.

Vera Report

Actual Sentence	Legal Aid		Private Attorney	
	No.	%	No.	%
Prison	127	.65	18	.31
Non-prison	67	.35	41	.69
	194		59	

No Presentence Report

Actual Sentence	Legal Aid		Private Attorney	
	No.	%	No.	%
Prison	118	.77	12	.20
Non-prison	36	.23	48	.80
	154		60	

As can be seen from the preceding table, 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. Under one view these can be dismissed as offsetting effects. Under another view, however, they can be viewed as complimentary with a combined impact of significantly reducing the wide discrepancies in case outcome based on differences in counsel. In no report cases Legal Aid suffered a rate of prison dispositions 57 percentage points higher than did prive attorneys. In Vera cases the gap was narrowed to a 34 percentage point difference.

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 non-prison recommendations, Legal Aid and private attorneys had virtually identical percentages of non-prison dispositions (see Table below).

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 be a counter-vailing 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 below). Thus the project may have tended to make the court more aware of the background of "high risk" privately represented defendants, and while 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 dis-positions 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 non-prison recommendations) serviced by the project.

"Prison Recommendation" (FIO)

Actual Sentence	Legal Aid No.	Legal Aid %	Private Attorney No.	Private Attorney %
Prison	102	.95	13	.54
Non-prison	5	.05	11	.46
	107		24	
	Non-Prison Recommendation			
Prison	14	.19	6	.18
Non-prison	59	.81	27	.82
	73		33	

One additional word on the project's differential impact in Legal Aid and private counsel cases must be added. The clientele 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 non-prison disposition more likely. In order to assess the significance of the project's reducing 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 useable measure available from research thus far is 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 has among other things helped significantly to narrow, but has not eliminated, sentencing disparities based on differences in counsel.

IV. CONCLUSION

Presently misdemeanant sentencing in most high volume metropolitan criminal courts is accomplised in an extremely haphazard manner. This situation exists because there is a crucial need:

(1) for verified objective social history information in a shorter presentence report than that of traditional probation departments; and

(2) to apprise the court of the availability of community-based supervisory and service providing agencies and to effectuate referrals to such agencies in appropriate cases

The Bronx Sentencing Project was undertaken with this in mind and has demonstrated many things, the most important of which are that:

(1) in addition to an increase in the number of pre-sentence reports which have been ordered, there has been a radical shift in the social characterics of persons who have received these reports;

(2) there has been significant agreement between the project's recommendations and the court's sentences;

(3) the presence of social history information and the availability of community-based alternatives to prison apparently results in a higher rate of non-prison dispositions at the first appearance for sentencing;

(4) any increase in the non-prison disposition rate does not seem to result in any significant increase in the rate of recidivism; and

(5) two factors--type of counsel and custody status on the day of sentencing--had a disturbingly large influence on sentencing patterns, with defendants represented by the Legal Aid Society and those in custody at the time of sentencing receiving prison sentences at a much higher rate than those represented by private counsel and those not in custody at the time of sentencing, most other factors being equal.

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