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THE NEW YORK CITY
COMMUNITY SERVICE SENTENCING PROGRAM
(FIFTH INTERIM REPORT)

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April, 1985

ACKNOWLEDGEMENT

When New York City and New York State committed funds to expand the Community Service Sentencing Program, it was with the hope that wider use of the new, alternative punishment would help New York get some relief from mounting pressures for more jail cells. Therefore, commitments of funds were accompanied by a request that Vera's Research Department launch an impact analysis that would give as solid a picture as possible of the program's jail displacement effect. The question whether this program actually operates as an alternative to jail was, of course, central to Vera's own research agenda, which encompasses a host of other questions about program operations. With additional financial support from the Florence V. Burden and the Charles F. Culpeper Foundations, Douglas McDonald of Vera's Research Department undertook an empirical examination of the program. His research is now complete and his book, Punishment Without Walls? Community Service Sentences in New York City, will be published early next year by Rutgers University Press. His research was designed to explore both the program's impact on the process by which lower courts decide to jail or not to jail, as well as the program's impact on the attitudes and subsequent behavior of offenders sentenced to community service.

This is an interim program report, not a research report, but in it I draw on some statistical findings from Doug McDonald's evaluation. His research has also yielded a variety of analytic techniques which are now being applied by program staff on a periodic basis. When McDonald's formulae are applied to data drawn periodically from the program's management information system, it becomes possible to monitor accurately the most important dimensions of program operations. This permits me, as a program manager, to understand rather precisely what we are accomplishing -- particularly whether or not the program is displacing short jail terms at an acceptable rate -- and how we might do it better. I am very grateful to Doug McDonald for carrying out his own work in a way that affords me this luxury.

Judith Greene
Director of Court Programs

Executive Summary

This report is the fifth in a series of interim reports on the impact of the New York City Community Service Sentencing Program. The program is intended to enforce a sentence (70 hours of supervised, unpaid labor for the benefit of community groups) imposed as an alternative to short jail terms in cases where the New York City courts typically punish by jailing because no enforceable alternative punishment is available. These cases are, for the most part, property misdemeanor cases involving offenders with prior records of recidivism in the property misdemeanor category.

The program and the methodology used to evaluate its impact are described more fully in the text. But, because most "alternative" sentencing programs do not, in fact, achieve substantial displacement of jail sentences, this summary focuses on the highlights of the impact analysis.

- *Of the property misdemeanor recidivists sentenced to the project in 1984, fifty-seven percent would have drawn jail sentences if the project had not been operating.
- *In 1984, program operations reduced the demand for jail cells by ninety-nine cells.
- *The jail terms that would have been drawn by those sentenced to community service are short jail terms, but the number of cells that would have to have been reserved to incarcerate the offenders is significant; with Rikers Island at and over capacity, the economic value of reducing demand for cells is substantial.

The jail-displacement impact of this program is now better than the goal of 50 percent (already an ambitious goal in a field where research has shown it to be exceedingly difficult for "alternative" projects of size to displace jail terms at a rate of even 10 percent). The economic benefits of reduced demand for cells, together with the economic benefits to distressed inner-city communities from the supervised, unpaid labor, much more than offset the costs of program operations. And, of course, the cause of justice is served not only by the effective non-custodial punishing of the fifty-seven percent who would have gone to jail, but also by the program's administering of a cost-effective punishment to the other petty recidivists who would have "walked".

The major program elements -- screening, supervision and enforcement -- have been tested and, although continuously under revision, have been refined during the six years of development; it is now clear that a large number of recidivist property offenders can be effectively and constructively punished without jailing. More than eight out of ten offenders comply with the court-ordered term of service. For those who fail, it has been demonstrated that most can be located and returned to court for resentencing. A Vera Research Department study (from which some of the findings on impact have been taken for this interim report) has found that only six percent of those sentenced to community service escape punishment; Ninety-four percent either completed their term of unpaid, supervised community service or were jailed upon being returned to court after the violation.

In addition, the follow-up studies show that, although a community service sentence does not often make a responsible citizen out of a petty recidivist, short jail terms don't do that either -- rearrest rates are virtually the same for similar groups sentenced to jail and sentenced to community service. During 1984 the Research Department undertook a study of participant recidivism with the goal of developing screening criteria which could produce an improvement. The results of the study -- which will enable the program to effect a modest gain in controlling recidivism -- are detailed in part III of this report.

I. Background: The Difficulty of Finding Real Alternatives

The general enthusiasm for "alternatives to incarceration" persists in an uneasy co-existence with hardening views on penal policy and growing fascination with incapacitation as an organizing principle for sentencing policy. In the last couple of years, as the jails have become more overcrowded and the public purse has been strained, New York's search for real alternatives has intensified.

Nevertheless, the track records of programs that aim to provide alternatives to jail have not been very good. The reason is that it has proved very hard to prevent "alternatives" from being used exclusively for first (or minor) offenders for whom the prospect of being sentenced to jail is, in any event, unlikely. Using the alternatives for cases to which the courts would not ordinarily attach punishment makes the alternative unenforceable (when offenders refuse to comply); this quickly becomes obvious--to offenders and judges alike--and, in turn, makes it all the more difficult to move the courts toward using the alternative in cases that are serious enough for enforcement of the sentence to be an issue and jail a likely outcome.

II. The New York City Community Service Sentencing Project

(a) The Pilot

One of the most promising ideas for alternative sentencing is the imposition of a certain number of hours of unpaid work for the community's benefit, in lieu of incarceration. In practice, this concept has been widely embraced but has at the same time been diluted to the point where thousands of such sentences are imposed yearly in this country and virtually none of them are imposed in cases where jail would otherwise have been used. Convinced that there was nothing wrong in the concept of community service sentencing--and much to recommend it--Vera and the Bronx District Attorney launched a pilot project in 1979, to demonstrate how to target this alternative on jail-bound cases and how to administer the sentence when dealing with the much more difficult offender group that actually gets jail: the unskilled, unemployed Black or Hispanic offender who faces multiple personal problems and has a prior record.

From the inception, the project has stood outside the mainstream of community service sentencing in this country. Community service sentences customarily go to middle class, white first offenders who require little supervision and little support and who face little risk of jail. But by excluding first offenders, by proving to the court that the project could and would directly supervise the offenders' performance of their service obligations, and by proving to the court that staff

could and would (either themselves or through their close working relationships with the Police Warrant Squad) secure the re-sentencing of offenders who refuse to perform their community service or who disobey the rules for behavior at the community sites, the New York City project seems gradually to have won recognition from most prosecutors and judges that it is possible to administer a punishment--at least this punishment--without jailing. The implications of this demonstration, in turn, are being incorporated into the redesign of community service sentencing in other jurisdictions, both within New York State and elsewhere.

The Bronx pilot ran from the end of February, 1979, through September, 1980. In the pilot phase, 260 offenders were sentenced by the Bronx Criminal Court to perform 70 hours of unpaid service for the benefit of the community, under the supervision of project staff. They cleaned up badly neglected senior citizens' centers, youth centers and neighborhood parks; they repaired appliances and installed smoke alarms for the elderly; they helped to staff recreational programs for retarded children, and painted and repaired community facilities and playgrounds; and they performed other useful work in one of the most service-needy areas of the city. Some continued to volunteer their services after completing their court-imposed obligations.

The evidence was strong that the pilot met its goal of restricting the use of this new sentence to those who would have served short jail terms. Eligibility criteria, established before the pilot began, ensured that all of the 260 had been convicted as adults at least once before, as a group they averaged 2.5 prior convictions; a third had been convicted of a felony some time in the past; over half received the community service sentence in a prosecution commenced by arrest on felony charges (all property offenses); 95 percent were Black or Hispanic; and all were unemployed at the time of the arrest and conviction that led to their being sentenced to the project. This is the profile of the jail-bound group in New York City. Additional evidence that the pilot project reached a group of offenders who faced a substantial risk of jail emerged from the re-sentencing data: although almost 90 percent completed the community service sentence, the rest were referred back to court to be re-sentenced; almost all were given jail sentences on the underlying convictions.

For the nearly 90 percent who satisfied the conditions of their community service sentences, the pilot project staff offered assistance in finding jobs, housing, and educational or other social services. This appears to have been essential for the offenders who did use the experience of making restitution by community service as a starting point for a change from petty property crime to a legitimate income and life-style. Few of the 260 had any past experience of steady employment, though most were in their mid-20s (they ranged in age from 16 to 45);

at least a third were having evident problems with drugs, and others needed treatment for alcoholism; some were illiterate and few scored above elementary grade levels on reading and math tests. (The case summaries appended to the full report of the pilot project more clearly convey the need of this Criminal Court population for basic services of all kinds.¹) Staff provided emergency assistance to those who could not perform the sentence without it. In addition, two-thirds of the project participants accepted help in formulating and carrying out post-sentence plans; each was referred to at least one agency or employer (half had two or more appointments set up for them). Although only 50 percent of these appointments were kept, many participants went on to get jobs, stipended training, or treatment.

The pilot showed that in many cases which would otherwise end in jail time of up to 90 days, the court could view the community service sentence as a suitable alternative penalty for the offense, and that nearly all who got the sentence would, if properly supervised, perform it. The result was to introduce into regular use a new penal sanction--one that is more positive, less burdensome and less costly than jail time, but more burdensome, more likely to be enforced, and, thus, more credible than the previously existing "alternatives" to jail (e.g., pretrial diversion, probation, fines).

(b) The Demonstration

As a result of the pilot, the City asked Vera to manage a formal demonstration project in community service sentencing. It began on October 1, 1980, with a slight expansion of the Bronx operation and the laying of groundwork for a Brooklyn replication. The Brooklyn office opened in December. In the Spring of 1981, when the swelling volume of short-term prisoners presented the City with an overcrowding crisis on Rikers Island, Vera was asked to expand the project further to handle 1000 sentences per annum, and to adapt it to the Manhattan Criminal Court as well.

The City allocated up to \$610,000, matched by \$150,000 from the Edna McConnell Clark Foundation, for this larger effort. Expansion in the Bronx and Brooklyn began and a Manhattan project got up and running at the end of September, 1981. For Fiscal Year 1983-84, the City held its financial support constant, and New York State added \$250,000. For FY 1984-85, the City allocated \$651,107 and the State share was \$267,500. In FY 1985-86 the State share will increase to

¹The New York City Community Service Sentencing Project: Development of the Bronx Pilot (New York: Vera Institute, 1981).

forty-five percent of the total budget -- as allocations will be added to strengthen the program's central administration as well as to expand the program to cover the borough of Queens.

Although caseloads tripled over the two years of expansion, the rate at which project staff have secured compliance with the terms of the sentence from persons sentenced to community service is holding at above eighty percent. To protect the integrity of the community service sanction and to ensure its usefulness to the courts, project staff are rather vigorous in their enforcement efforts. First, all reasonable assistance is offered to offenders to aid them in completing their seventy-hour terms (e.g., emergency lodging, detox, nutrition and health services). Phone calls, warning letters and visits to the homes of participants who fail to report as ordered to the service sites exact compliance in most cases; when these efforts fail, a letter is presented to the court alleging non-compliance, detailing the staff's efforts to date, and asking that the case be restored to the calendar for resentencing. Close cooperation from the Police Department Warrant Squad helps to bolster the project's ability to return most violators to court. In the majority of delinquent cases, project staff are able to arrange to have the offender brought back before the original sentencing judge.

Once violation of the community service obligation has been established, the judge resentences; the new sentence may be chosen from the full array of sentencing options the law provides for the original conviction. Because more than eight out of ten offenders sentenced to community service complied, because at least two-thirds of the offenders who failed to comply were returned to the court for resentencing, and because eight out of ten of those so returned received jail terms, the program's enforcement record continues to encourage compliance by a difficult-to-manage offender group and this, in turn, encourages continued use of the sentence in cases where punishment is a priority for the court. Only six percent of the offenders sentenced to perform community service under project supervision have so far escaped full punishment; ninety-four percent have either completed their term of unpaid, supervised community service or have been jailed upon being returned to court to answer for the violation.

c) The Impact Analysis--Method Used

Vera's Research Department has now completed a study of the impact of this project on the demand for jail cells at Rikers Island. However successful project operations may be, the bottom line questions are: how many of the offenders sentenced to community service would, if the projects did not exist, have been sentenced to jail, and for how long? And, to what extent has the operation of this alternative sentencing program affected the level of crime in the City?

From the beginning of the pilot project through December, 1984, almost 3,220 offenders had been sentenced to perform community service under the project's supervision. The profile is still that of a jail-bound group: those sentenced to community service average 9.6 prior arrests and 6.3 prior convictions, and fifty-two percent had received a jail or prison term on their last conviction.

But knowing that the profile is similar to the profile of offenders drawing short jail terms is not enough. The most certain method of determining how, if the community service sentence had not been available, the courts would have disposed of the cases of offenders sentenced to community service would be to establish randomly-selected experimental and control groups. Although this method would yield the least ambiguous results, it would also require randomizing the sentencing options available to judges in paper-eligible cases. In the Criminal Court sentencing context, such a procedure raises problems that would be at least difficult to overcome, and implementing such a procedure might so distort the normal decision-making process as to render any findings questionable.

In lieu of a classical experimental approach, the Vera Research Department developed a method involving a retrospective statistical analysis to determine how the courts reached the decision to jail or not to jail in cases similar to those in which community service sentences were in fact imposed. With the aid of a computer, a number of statistical models were developed to find the set of statements which most closely predicted the actual proportion of defendants jailed, out of a test sample of defendants who were, on paper at least, eligible for sentencing to the program. These models were then used to estimate the proportion of community service participants who would have received a jail sentence if the community service sentencing option had not been available to the courts.

The population used to develop and to test these statistical models consisted of a pool of criminal court defendants who were initially screened as eligible for community service by project court representatives, but who were subsequently dropped from consideration for a variety of reasons. The utility of model that predicts the sentences of "rejects" can be seen more clearly by examining the screening process that generates the pool of defendants from which rejects and project participants are both ultimately drawn. Initially, cases are culled from the daily court calendars on the basis of appropriate charges--these being the basic range of property and theft offenses which lack elements of threat or violence against the person. The court papers for such cases are then searched for a variety of factors which help to determine first-cut eligibility: indicia of jail-boundness (e.g., a record of prior conviction, pretrial detention status, markings by judges or assistant district attorneys as to the

plea offer); reliability of the defendant, indicated by his or her community ties; and a determination that the defendant does not have a recent and significant record of violent behavior. Once this check of threshold eligibility had been made, the data about eligible candidates are entered on the project's MIS forms, from which they enter the research data base.

Discussions are then held with defense attorneys, assistant district attorneys and defendants. At any of these stages, the case may be rejected from further consideration. Eligible defendants wind up in the reject pool for many reasons: ADAs may indicate that a case is not substantial enough to warrant a community service sentence or may so strongly insist on a heavier sentence that community service is effectively barred. Some defendants may be dropped because they have pending Supreme Court cases which ultimately yield a negotiated settlement to cover the Criminal Court case. Other defendants, or their counsel, turn down the suggestion of community service because they prefer to try for a more favorable disposition. Probation officers may object to a defendant taking the plea offer if he is already on probation, demanding that the court impose a stiffer sanction. Judges sometimes reject plea recommendations involving community service and impose other sentences, both lighter and heavier. The project's court representatives themselves may decide to reject a defendant because, upon further investigation, they decide he has a pattern of past violence or a current problem with drugs or alcohol that is severe enough to pose an unacceptable risk on the work sites. Some cases are simply lost: the case may be held over for a night arraignment, or a defendant who had been released from detention may fail to show up at the next court date.

Because of the complex way the pool of eligibles is separated into the two separate pools (participants and rejects), those who end up as rejects do differ in various ways from those who are ultimately sentenced to community service. Therefore, a simple projection onto the participant pool of the dispositional pattern found to occur in the cases of rejects is not the soundest method of measuring the proportion of participants who would have drawn jail sentences in the absence of the project.

But the evaluation strategy followed here does not require an identical composition of the participant pool and the reject pool. What matters is that there be a good deal of variation in the reject pool, both in the characteristics of the defendants and in the types of dispositions reached in their cases. This variation is needed so that one can construct statistically the set of predictive statements (expressed in mathematical form) that best predicts how the cases were

disposed by the courts. Fortunately, the program's reject pool was sufficiently varied for these purposes.

The predictive models were built by testing many "what if" propositions to find the one that best fits the actual pattern of jail/no jail dispositional decisions. For example, what if the courts systematically imposed more severe sanctions upon defendants who had heavier criminal records, higher charges, more recent convictions, and were older? Furthermore, what if the prior record were 5.7 times more influential in this result than the level of the charge and 3.2 times more important than the recency of last conviction? Obviously, there are hundreds of such possible combinations. Fortunately, using a computer speeds up this modelling process; one can quickly test a number of different combinations of predictive variables, and the computer is programmed to generate for each combination the estimated weight given to each variable.

The first step was to identify factors found to be associated with going to jail so that they could be included in the modelling process. For the first wave of impact analysis, rejects whose cases were screened by project court representatives in the three boroughs between October 1, 1981, and September 30, 1982, were measured along a number of different dimensions, and the statistical correlation between each of these dimensions and the disposition reached was examined. For the purpose of this analysis, outcomes were categorized either as "jail" or as "non-jail" (i.e., all other dispositions combined, including dismissals). "Time served" was conservatively classified as a non-jail disposition. Cases not reaching final disposition in the Criminal Court (those transferred to other courts) were omitted.

Dozens of characteristics were tested for their association with jail sentences, including numerous features of the prior criminal records, the charges, the socio-economic backgrounds of defendants, as well as various characteristics of the adjudication process (such as the time between arraignment and disposition, the defendant's pretrial detention status, and the type of court part where the case was disposed). Many of these factors were correlated with going to jail, but were also correlated with each other. By a process of elimination, a statistical model was built to predict the sentences for each borough's rejects which was both parsimonious (having the fewest number of predictive variables) and most strongly predictive of

actual dispositional outcomes.² Although the models vary from

²In technical language: a best-fitting linear logistic regression model was constructed using a procedure developed by Frank Harrell (SAS Institute, Inc.: Cary, N.C., 1980). This general class of multivariate techniques was originally developed by economists to model the way the economy works, although the sub-species used here was elaborated by bio-medical statisticians interested in determining the effects of drugs on various kinds of physiological actions. Logistic models are best suited to situations in which what is being explained has a dichotomous form, such as jail/no jail. The mathematical form of the model is as follows: Y denotes the dependent variable (jail=1, no jail=0) for the n th observation. The vector of the independent, or predictive variables, for the n th observation is $X_{n1}, X_{n2}, \dots, X_{np}$. Furthermore, $X_n B = X_{n1} * B_1 + X_{n2} * B_2 + \dots + X_{np} * B_p$ in which $B = (B_1 \dots B_p)$ denotes the vector of regression parameters. The assumption of the model is that the probability that $Y_n = 1$ is $1 / (1 + \exp(-X_n B))$. Here $X_{n1} = 1$, so that B_1 is the intercept parameter.

The models were constructed in each borough using only those rejects whose cases were disposed of in the post-arraignment parts. The 10% of rejects whose cases reached disposition at arraignment could not be folded in with the post-arraignment rejects because they differed in two important respects. First, almost all defendants were held in pretrial detention at arraignment, and there was consequently no relationship between detention and sentence. Second, because arraignment and disposition always occurred on the same day for this group, no correlation could exist between the time to disposition and the severity of sanction. What the researchers derived, therefore, was a model in each borough which best predicted the outcomes of the majority of the cases which were disposed of in post-arraignment hearings. This probably has no bearing on the utility of the model for predicting what sentences participants would have received had they not been sentenced to community service, because most of the participants who were sentenced to community service at arraignment would have had their cases put off for subsequent appearances had they not taken the plea to community service. It is likely that, in these later hearings, their cases would have been disposed of in the same fashion as were the rejects' cases.

borough to borough, the variables found to be useful included: number of prior arrests, time since last conviction, time between arraignment and disposition, whether or not the last prior conviction resulted in a jail sentence, and pretrial detention status at the time of sentence on the current charge. In Brooklyn, a model was developed that predicted eighty percent of the actual decisions; in the Bronx, the model predicted eighty-seven percent of the decisions; and the best model that could be developed for Manhattan predicted seventy-eight percent of the jail/no-jail decisions.

The models were then applied to the pool of eligibles who became participants, to estimate the proportion of those sentenced to community service who would have gone to jail in the absence of the program. The computer went through each participant's case, weighing each predictive variable as specified in the model for the borough in which the case originated, thereby producing an estimated probability of that offender being sentenced to jail.

Some adjustments were applied to the estimates created in this fashion to account for error. This was necessary because the models developed to predict dispositions in rejects' cases were correct only in seventy-eight percent to eighty-seven percent of the examined cases. The probability and direction of error in the original model were measured, and a procedure derived from Bayes' law was devised to account for the errors in these models and in their derived estimates.

(d) Impact Analysis - Calendar Year 1982 Results

When these models were applied to the offenders sentenced to community service in calendar year 1982, it appeared that forty-four percent would have been sentenced to jail. (Ignored in this estimate of jail displacement were the additional offenders who would have received "time served" jail sentences had they not been sentenced to community service; they were counted as "non-jail" dispositions.)

Having fixed, at forty-four percent, the program's rate of displacing jail sentences in calendar year 1982, it was possible to use the same data base to estimate the average length of the jail terms that would have been received (and the average time that would have been served after taking account of credits for pretrial detention and good time) by the project participants who would have been sentenced to Rikers Island. In calendar year 1982, the program freed up an estimated total of forty-eight cell/years in the Department of Correction's supply

of cells for sentenced inmates.³ The project's operations also reduced demand for detention cells because defendants sentenced to community service spend less time in the system waiting disposition. An estimated seventeen cell/years were freed up in calendar 1982 by the project's impact on time to disposition.

Thus, the total number of cell/years saved by the project's displacement of defendants from Rikers Island can be estimated, with reasonable reliability, at sixty-five cell/year in calendar 1982. Attaching a dollar value to this reduced demand for jail cells is difficult. With Rikers Island at capacity, the easiest method (but one that inevitably overstates the economic value to the city of this impact) is to reckon the costs avoided as sixty-five new cells not built, at roughly \$100,000 per cell, or \$6.5 million. In addition, the services provided to the community through the unpaid labor of offenders sentenced to the project in 1982 can be valued at roughly \$200,000.

3A reliable estimate of the jail time community service participants would have served was developed from a simple analysis of the sentences imposed on the jailed rejects who were in the data base from which the jail displacement models were developed. During the October 1, 1981 - September 30, 1982 period, rejects who were sent to jail were given sentences that averaged sixty-eight days in the Bronx, seventy days in Brooklyn, and 115 days in Manhattan. For the sake of deriving an estimate of time actually served, it was assumed that all inmates were given full credit for "good time" at the rate of one-third off the definite sentence. (This yields a conservative estimate of time actually served, for a portion of those sentenced to jail lost good time credits for misbehavior and thereby serve a larger portion of their court-imposed sentence than is being counted here.) The number of pre-trial detention days which were served before sentencing were computed and subtracted from this definite sentence-minus-good-time figure. After these adjustments were made, the time actually spent in jail by jailed rejects, subsequent to sentencing, in 1983, was estimated at an average of thirty-eight days in the Bronx, forty-nine days in Brooklyn, and sixty-three days in Manhattan.

It is valid to assume that those program participants who would have been sent to jail in the absence of the community service sentence would have been given sentences of similar lengths. This is because the reject and participant populations were nearly identical in those characteristics which were found to be at all correlated with sentence length.

(e) Impact Analysis--Calendar Year 1984 Results

With the impact analysis in hand, the underlying body of new knowledge about the dispositional process in each borough (and the factors most powerfully predicting jail sentences there) permitted the project managers to try to adjust the program intake procedures so as to meet or better the program objective of fifty percent jail displacement. The computer modelling process had revealed marked differences in the rate of jail displacement between the boroughs--the City-wide rate for 1982 was actually the result of jail displacement rates ranging from twenty percent in the Bronx, to twenty-eight percent in Brooklyn, to sixty-six percent in Manhattan. In 1983, the focus of efforts to make the program even more efficient as a mechanism for reducing pressure on the jails fell on the two boroughs with the lowest jail displacement rates.

Research staff provided the project managers with profile data, from each borough's reject pool, which helped enormously to distinguish (within the class of recidivist property misdemeanants) those likely to get jail sentences and those likely to "walk". More detailed case screening criteria were drawn from these profiles. For example, because very few of the 1982 jailed rejects had been at liberty at the time of sentencing, the projects' court representatives were instructed to avoid initiating project consideration of defendants who had been ROR'd or who had made bail. Similarly, where factors such as length of time since last conviction, or length of prior record had been found to be powerfully predictive of dispositional outcome, borough-specific standards for these factors were developed to assist court representatives to weigh the likelihood of a jail sentence in a particular case.

As was hoped, the new screening standards soon resulted in a marked shift in the profiles and case characteristics of offenders receiving the community service sentence in the Bronx and Brooklyn. As a result, the 1983 program participants' profile more strongly resembles the profile of the jailed rejects from the research pool. To test whether these changes in intake procedures did, in fact, improve the jail displacement impact of the program, the researchers undertook a second modelling process for one borough--the Bronx--and the results showed substantial success. The jail displacement rate there rose from twenty percent to fifty-two percent.

Following the research strategy discussed in some detail in section (e), above, the researchers gathered all the necessary data about a pool of 221 eligible-but-rejected Bronx defendants whose cases were screened between July 1 and December 30, 1983. Again, the characteristics statistically associated with a jail disposition were identified through statistical tests, and these characteristics were used to build a statistical model that could predict the sentencing outcome of the reject-pool cases within a reasonably small margin of error.⁴ As before, the model was then applied to each case in which an offender had been sentenced to community service in the Bronx between July 1 and December 30, 1983. The result--a reliable estimate of the proportion of project participants who would have drawn jail sentence--was a fifty-two percent jail displacement rate for the Bronx project. Estimates of actual cell/years saved in 1983, after introduction of the new screening procedures and the resulting improvement in displacement effect, jumped even more dramatically over 1982, because the terms that would have been received by the jail-bound participants had grown longer, and because the Bronx project intake volume increased in 1983. The Bronx project was responsible for seven of the cell/years saved in 1982; it was responsible for the saving of twenty cell/years in 1983.

Over the past year the program management staff, using the same techniques developed by the research department for the evaluation effort, have completed a remodelling process for the other two boroughs -- Brooklyn and Manhattan -- and can project the overall gains in displacement with accuracy for 1984. In Brooklyn, this remodelling effort shows that screening standards drawn from the research findings have yielded a displacement rate for that borough of fifty-seven percent (up from twenty-eight percent before the new standards were devised). In Manhattan, where the original displacement rate had been well above the fifty percent level, the remodelling exercise was performed to assess whether any serious erosion of program impact had occurred since the evaluation period. The Manhattan results show current displacement at fifty-nine percent.

Since operation in all three boroughs have now been reexamined using the modelling technique, we can extrapolate the current city-wide displacement estimate by applying the borough displacement rates to each borough project's 1984 intake. Then with reference to the average pretrial detention time and average sentence length for the reject groups, we can calculate the number of cell/days saved on each community service sentence. The results of these estimating calculations is an overall savings of ninety-nine cell/years in calendar year 1984-- fifty-six cell/years saved by jail sentence displacement and forty-three cell/years saved in pretrial detention time. In light of the roughly \$40,150 of operating costs incurred per cell in the City's jails today, the program might be considered

⁴See, section (e), above

to have avoided \$3,974,850 in outlays for operations.⁵

III. IMPACT ON CRIME: MODIFYING THE ELIGIBILITY CRITERIA FOR THE COMMUNITY SERVICE SENTENCING PROJECT

During the opening months of 1984, the Manhattan Community Service Sentencing Project (MCSSP) established new policies to govern the selection of defendants considered eligible for community service sentences. (1) Defendants would no longer be declared eligible for the project if they had more than twenty-five arrests on their record. (2) Those with more than ten prior arrests were to be excluded if they had been arrested within ninety days prior to arraignment for the instant offense. These new rules were instituted in response to complaints that the project was being used in too many instances where offenders should have been jailed because they seemed to be on a "crime spree."

This represented a shift in the operation of the program. Prior to this, eligibility rules had been drawn to further two principal goals: (1) to ensure that a substantial proportion of those sentenced to community service would have gotten short jail sentences in absence of the Vera project, and (2) to minimize the chances of offenders not performing their court-ordered service reliably or committing violence against others while in the project. Vera's Community Service Sentencing Project had been explicitly designed as a non-incarcerative punishment for non-violent recidivists, most of whom had committed relatively minor property offenses often enough to be headed for jail; the new eligibility rules, designed to screen out the most active offenders, were seen as key components of a strategy to institutionalize this new sentencing option in the New York City courts.

It had not been a surprise that many offenders were rearrested again within a relatively short period of time after being sentenced to community service. In designing the project, Vera's planners had few illusions about the ability of a term of community service to change offenders, thereby reducing their criminality. Nobody expected a short stint of community service to produce a dramatic rehabilitation, although they were less certain of what the sanction's educative effect might be. The project was not conceived of as a crime control tool, but rather as a deserved punishment for persistent petty crime.

⁵Edward I. Koch, "Message of the Mayor: The City of New York Executive Budget, Fiscal Year 1986" (Office of Management and Budget: May 3, 1985). p. 69. This report estimates the cost per jail day (including pensions, debt service, fringe benefits and all associated personnel and OTPS costs) at \$110.

There was yet another reason why some recidivism had been expected. The project was explicitly created as an alternative to short jail sentences, and offenders who are most likely to have been sent to jail in the absence of the project are also those most likely to be rearrested again. This is especially true with petty property offenders, the very group that the Vera project focusses on. Had project managers chosen to concentrate their resources on first offenders, a very large proportion of those sentenced to community service would undoubtedly have gone straight and would not have been arrested again in the future. However, such a project would do nothing to relieve the pressure on the city's jail system because first offenders convicted of misdemeanor property crimes are rarely given jail sentences.

The Institute's evaluation research revealed that fifty-one percent of those sentenced to MCSSP between September 1981 and March 1982 were rearrested within 180 days of being sentenced to the project.⁶ A very small proportion of them were rearrested for offenses involving injury to others; the vast majority were for relatively minor theft-related crimes. To explore whether fewer arrests would have occurred if jail terms had been imposed instead of community service, evaluators compared the rearrest rates of these offenders with those of a similarly-defined population that had received jail sentences instead of community service orders. They found that forty-nine percent of those released from jail were rearrested within 180 days of their release, indicating that jail sentences apparently do not deter offenders from committing crimes any better than do sentences of community service.⁷ Despite the apparent equivalence of longer-term deterrent or rehabilitative effects, however, it was obvious that some proportion of these crimes would have been averted if the offenders had initially been jailed instead of being sentenced to community service. They simply would have been incapacitated temporarily and thereby rendered unable to commit crimes against others in the free community.

In early 1984, project managers in Manhattan began to consider ways to reduce the frequency of post-sentencing recidivism. Rather than trying to change offenders by altering the nature of community service sanction itself, they aimed to screen out those most likely to commit more crimes shortly after sentencing, leaving it to the courts to dispose of them in other ways. This posed some difficult issues, however. How can one determine who is more likely to commit crimes in the future? Managers decided to screen out offenders whose arrest records indicated an active criminal life in the recent past.

⁶Douglas McDonald, *Punishment Without Walls? Community Service Sentencing in New York City* (Rutgers University Press, forthcoming).

⁷Ibid.

Of course, most of the defendants who had been considered eligible for the project had long arrest records (more than half had been arrested eight or more times since turning sixteen). Furthermore, those with longer arrest records were also more likely to receive jail sentences. The project's managers could not draw the screening line too low, because doing so would sacrifice one of the project's prime objectives: to have the community service sentence imposed in cases where jail terms would have been ordered in the absence of the Vera option.

After analyzing some relatively sparse data on rearrest patterns, management devised what they thought was the best solution, one that balanced in a satisfactory way the different objectives. It was decided that defendants would no longer be considered eligible if they had more than twenty-five prior arrests on their record. A few months later, they decided to exclude those who had been arrested one or more times within the ninety days immediately prior to arraignment for the instant offense. By the end of April 1984, both rules were in effect.

The project's managers also decided to conduct a much more lengthy detailed research effort to see if a better set of screening rules could be designed. The Institute's Research Department was asked to draw a larger sample of participants sentenced to the project by the Manhattan courts and to apply a number of different screening criteria to them in order to see whether these different criteria would have affected significantly the rates of subsequent criminality (or, more precisely, the frequency of subsequent arrest). Researchers were also asked to estimate the impact of these different criteria upon the project's "displacement rate," --- the proportion of participants who would have gotten jail sentences in the absence of MCSSP.

For this analysis, a total of 218 participants were examined. Included here were all offenders sentenced to MCSSP from January 1st through March 31st, 1983, and from August 1st through September 31st, 1983. All were sentenced before the imposition of the new screening rule. These time periods were chosen because a good deal of the needed information had already been collected on these participants. These data were then augmented by more detailed information about each participant's previous arrest history, which was obtained from the official NYS Division of Criminal Justice Services' Chronological Criminal History records in the community service project files. The New York Criminal Justice Agency also searched its computerized files at our request, providing evaluators with a record of each arrest incurred by participants in New York City during the 180-day period following the date of sentence to MCSSP. These records permitted evaluator to count the numbers and types of crimes for which offenders were arrested after being sentenced to MCSSP.

Table 1, shown below, counts the numbers of participants who were rearrested within thirty, sixty, ninety, and 180 days of sentence. The cumulative percentage of participants

rearrested during these periods was twenty-three, thirty-five, forty-six, and fifty-eight percent, respectively. Forty-two percent were not rearrested in New York City (nor elsewhere, in all probability) during the six months following the date of sentence. The Research Department also estimated that approximately sixty-five percent of these participants would have gone to jail in the absence of the project.⁸

TABLE 1

Proportions of Participants Rearrested,
by Days Since Being Sentenced to MCSSP
(Total in Sample = 218)

Days Between Date of Sentence to MCSSP and First Rearrest	Participants Rearrested	
	Cumulative Number	Cumulative Percentage
1-30	49	22.5
1-60	76	34.9
1-90	101	46.3
1-180	127	58.3

In their attempt to construct new screening criteria that would substantially reduce to proportions of participants rearrested without unacceptable sacrifice in the project's jail-displacement rate, researchers began by searching for characteristics that were associated with being rearrested within differing periods of time following sentencing to the project. Table 2 lists the characteristics that were examined and indicates how strongly correlated each was with (1) being rearrested with thirty days of sentence, (2) within sixty days of sentence, (3) within ninety days, and (4) within 180 days. A value of 1.0 indicates perfect correspondence; a value of 0.00 indicates absolutely no correspondence ("correlation") existed between the factors in the population we examined. In other words, the higher the value of the correlation coefficient, the stronger the observed association. In addition, the tables also report a measure indicating the likelihood that these observed correlations were the result of chance occurrence. The symbol

⁸The methodology for estimating displacement rates is discussed above, at pages 4 - 9.

TABLE 2

The Relationship Between Rearrest Within One, Two, Three, or Six Months and Several Other Characteristics

<u>Characteristic</u>	<u>STRENGTH OF ASSOCIATION</u>			
	<u>Rearrested w/in:</u> <u>30 days</u>	<u>60 days</u>	<u>90 days</u>	<u>180 days</u>
arrested w/in 30 days prior to instant arrest	.25***	.18**	.17*	.16*
arrested w/in 60 days prior to instant arrest	.33***	.25***	.19**	.14*
arrested w/in 90 days prior to instant arrest	.28***	.21**	XXXX	.15*
arrested w/in 120 days prior to instant arrest	.30***	.24***	.14*	.17*
arrested w/in 150 days prior to instant arrest	.23***	.19**	.14*	.16*
arrested w/in 180 days prior to instant arrest	.21**	.20**	.15*	.19*
arrested w/in 270 days prior to instant arrest	.15*	.17*	.20**	.24***
arrested w/in 365 days prior to instant arrest	.18**	.19**	.23***	.26***
total # prior arrests	.22***	.22***	.23***	.24***
# prior arrests w/in 30 days instant arrest	.23***	.15*	.15*	.15*
# prior arrests w/in 60 days instant arrest	.27***	.23***	.20**	.15*
# prior arrests w/in 90 days instant arrest	.27***	.23***	.19**	.19**
# prior arrests w/in 180 days instant arrest	.21**	.26***	.25***	.24***
# prior arrests w/in 270 days instant arrest	.19**	.27***	.31***	.33***
# prior arrests w/in 365 days instant arrest	.18**	.26***	.33***	.36***

* probability of chance less than or equal to .05
 ** probability of chance less than or equal to .01
 *** probability of chance less than or equal to .001
 XXXX no statistically significant correlation

TABLE 2- CONT'D

The Relationship Between Rearrest Within One, Two, Three, or Six Months and Several Other Characteristics

Characteristic	STRENGTH OF ASSOCIATION			
	Rearrested w/in: 30 days	60 days	90 days	180 days
total # prior misdemeanor convictions	.18**	.22**	.23***	.25***
total # prior violation convictions	.15*	.14*	XXXX	.16*
total # prior convictions	.19**	.22***	.23***	.25***
total # prior dismissals	.20**	.14*	XXXX	XXXX
total # prior arrests open at instant arrest	.15*	XXXX	.17*	.18*
sentenced to jail for most recent conviction	.14*	.20**	.21**	.23***
# jail sentences w/in 365 days prior to instant arrest	.14*	.29***	.30***	.32***
# open cases w/in 365 days prior to instant arrest	.13*	XXXX	.19**	.15*
# total prior arrests divided by number of years participant has been at risk of adult arrest	XXXX	.22**	.21**	.26***
# total prior convictions divided by number of years participant has been at risk of adult arrest	XXXX	.22**	.20**	.26***
# days since last conviction	XXXX	-.18*	-.20**	-.24***
# jail convictions w/in 365 days prior to instant arrest divided by # arrests in same period	XXXX	.17*	.19*	.18*
participant completed project successfully (yes=0, no=1)	.35***	.19**	.17*	XXXX

* probability of chance less than or equal to .05
 ** probability of chance less than or equal to .01
 *** probability of chance less than or equal to .001
 XXXX no statistically significant correlation

TABLE 2-CONT'D

The Relationship Between Rearrest Within One, Two, Three, or Six Months and Several Other Characteristics

<u>Characteristic</u>	STRENGTH OF ASSOCIATION			
	Rearrested w/in: <u>30 days</u>	<u>60 days</u>	<u>90 days</u>	<u>180 days</u>
total # prior felony convictions	XXXX	XXXX	XXXX	XXXX
age of participant	XXXX	XXXX	XXXX	XXXX
pretrial detention status at time of conviction	XXXX	XXXX	XXXX	XXXX
arraignment charge level of instant arrest	XXXX	XXXX	XXXX	XXXX
# days to disposition of instant arrest	XXXX	XXXX	XXXX	XXXX
# bench warrants outstanding for arrests w/in 365 days prior to instant arrest	XXXX	XXXX	XXXX	XXXX
# bench warrants outstanding for arrests w/in 365 days prior to instant arrest divided by arrests in previous 365 days	XXXX	XXXX	XXXX	XXXX
# arrests w/in 365 days prior to instant arrest still open divided by # arrests in previous 365 days	XXXX	XXXX	XXXX	XXXX
employed/unemployed	XXXX	XXXX	XXXX	XXXX
# financial dependants	XXXX	XXXX	XXXX	XXXX
# of months living at current residence	XXXX	XXXX	XXXX	XXXX
sex of participant	XXXX	XXXX	XXXX	XXXX
marital status	XXXX	XXXX	XXXX	XXXX
school grade completed	XXXX	XXXX	XXXX	XXXX
participant white/not white	XXXX	XXXX	XXXX	XXXX

* probability of chance less than or equal to .05
 ** probability of chance less than or equal to .01
 *** probability of chance less than or equal to .001
 XXXX no statistically significant correlation

"**" following the correlation indicates that the likelihood of this association being the result of chance was estimated to be less than or equal to one out of a hundred; "****" indicates less than or equal to one in a thousand. If no asterisk is shown, the likelihood of the occurrence being due to chance was greater than five in a hundred. (This is a measure of how "statistically significant" the observed correlations were).

Researchers then constructed several selection criteria based upon the characteristics that were found to be most strongly associated with being arrested within the different time periods following date of sentence. Tables 3 through 10 report the results of the most interesting and potentially useful of these.

Table 3 applies the criteria that were established in April 1984. All defendants with more than twenty-five prior arrests are eliminated; those who have more than ten are eliminated if they were arrested within ninety days prior to being arraigned on the instant offense. Note that this substantially reduces the number of participants that could be considered eligible. Fifty-four of the 218 participants would have been considered ineligible under the post-April rule. This would have made a slight improvement in the rearrest rates--a decrease from fifty-eight percent being rearrested within 180 days of sentence to fifty-four percent. There was also a reduction of four to five percentage points in the rearrest occurring within the shorter periods of time following date of sentence. Because these offenders with longer records and more recent arrests were also more likely to be headed for jail sentences, the estimated displacement rate of the 164 remaining participants would have been slightly lower--about sixty-two percent.

Table 4 shows the impact of varying only one of the instituted in April 1984; the requirement that persons be eliminated from consideration if they have more than ten previous arrests and have at the same time one or more arrests within the last ninety days. Of the participants who would have been admitted under this rule, 55.5 percent were rearrested within 180 days. Comparing this to Table 3, one can see that the exclusion of offenders with more than twenty-five arrests and no effect on the subsequent recidivism rate. In addition, the pool of eligible offenders is cut less drastically, with no significant difference in the displacement rate.

A comparison of the remaining tables permits one to estimate the tradeoffs of different combinations of screening criteria. Which combination is preferable? If one is interested primarily in preserving the displacement rate and keeping the pool of eligibles as large as possible, while picking a rule that has as much effect as possible on subsequent recidivism, table 10 indicates that one could do very well by modifying the April 84 rule to eliminate the bar to persons having more than twenty-five prior arrests, and to exclude only those who have both more than twelve prior arrests and, at the same time, one or more arrests within the previous sixty days.

Perhaps the more important conclusion to draw from this exercise is that it is simply very difficult to determine which of these offenders will be rearrested in the near future. Our analyses were relatively sophisticated, and we were unable to develop any better predictive rules. It makes sense to try creating a rule to reduce recidivism, but we are able to work only at the margin. This population is one composed of relatively active low-level criminals, and it is probably beyond the reach of our knowledge and technology to create a sentencing policy of selective incapacitation that would work. Nevertheless, the rule suggested by Table 10 has been adopted by all three borough projects: where the defendant has more than twelve priors, the case will not be considered by the program if there was an arrest within sixty days prior to the arraignment date.

The Effects on Subsequent Arrest Rates of Excluding Different Kinds of Offenders
 from the Manhattan Community Service Sentencing Project

(Based on all participants accepted into the project between January 1 - March 31, 1983 and July 1 - September 30, 1983)

Table 3

Exclude if more than 25 priors; if more than 10 priors, exclude if w/in previous 90 days

	cum No.	cum %
1-30	27	16.58
1-60	49	29.9
1-90	69	42.1
1-180	89	54.3
Not rearrested within 180 days	75	45.7
Total in Sample	164	100%

Estimated proportion of participants that would have gone to jail in lieu of CSS

62%

Note: "priors" means "prior arrests".

Table 4

If more than 10 priors, exclude if prior w/in previous 90 days

	cum No.	cum %
1-30	31	17.08
1-60	54	29.7
1-90	78	42.9
1-180	101	55.5
Not rearrested within 180 days	81	44.5
Total in Sample	182	100%

63%

Table 5

Exclude if more than 25 priors; if more than 10 priors, exclude if prior w/in previous 60 days

	cum No.	cum %
1-30	28	16.38
1-60	51	29.7
1-90	71	41.3
1-180	92	53.5
Not rearrested within 180 days	80	46.5
Total in Sample	172	100%

63%

Table 6

Exclude if more than 25 priors; if more than 15 priors, exclude if prior w/in previous 60 days

	cum No.	cum %
1-30	32	18.08
1-60	55	30.9
1-90	75	42.1
1-180	96	53.9
Not rearrested within 180 days	82	46.1
Total in Sample	178	100%

65%

The Effects on Subsequent Arrest Rates of Excluding Different Kinds of Offenders
from the Manhattan Community Service Sentencing Project
(Based on all participants accepted into the project between January 1 - March 31, 1983 and July 1 - September 30, 1983)

Table 7

Exclude if more than 25 priors; if more than 12 priors, exclude if prior w/in previous 60 days

	cum No.	cum %
1-30	29	16.6%
1-60	52	29.7
1-90	72	41.1
1-180	93	53.1
Not rearrested within 180 days	82	(46.9)
Total in Sample	175	100%

Table 8

If more than 10 priors, exclude if prior w/in previous 60 days

	cum No.	cum %
1-30	32	16.8%
1-60	57	29.8
1-90	81	42.4
1-180	105	55.0
Not rearrested within 180 days	86	(45.0)
Total in Sample	191	100%

Table 9

If more than 15 priors, exclude if prior w/in previous 60 days

	cum No.	cum %
1-30	36	18.3%
1-60	61	31.0
1-90	85	43.1
1-180	109	55.3
Not rearrested within 180 days	88	(44.7)
Total in Sample	197	100%

Table 10

If more than 12 priors, exclude if prior w/in previous 60 days

	cum No.	cum %
1-30	33	17.0%
1-60	58	29.9
1-90	82	42.3
1-180	106	54.6
Not rearrested within 180 days	88	(45.4)
Total in Sample	194	100%

Estimated proportion of participants that would have gone to jail in lieu of CSS

64%

64%

66%

65%