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PLANNING, RESEARCH AND TECHNICAL ASSISTANCE ON, AND IMPLEMENTATION AND ENFORCEMENT OF, FINES, PROBATION AND OTHER ALTERNATIVES TO INCARCERATION

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PLANNING, RESEARCH AND TECHNICAL ASSISTANCE ON, AND IMPLEMENTATION AND ENFORCEMENT OF, FINES, PROBATION AND OTHER ALTERNATIVES TO INCARCERATION

Introduction: 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 a desirable organizing principle for sentencing policy. Over the last decade, as the jails in New York City and other major cities have become more overcrowded and the public purse has been put under increasing strain by the capital and operating costs of increasing the capacity to imprison, New York's search for real alternatives has intensified.

Nevertheless, the track records of programs that have aimed, over the past years, 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 new "alternatives" for cases to which the courts would not ordinarily attach punishment tends to make 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 persuade to sentencing judges that the alternative should be imposed in cases that are serious enough for enforcement of the sentence to be an issue and jail a likely outcome.

For several years, under its planning, technical assistance and research contract with the City of New York, Vera has been working with the Office of the Coordinator of Criminal Justice, the Office of Management and Budget, the courts, and other public and non-profit agencies, to design, implement and expand the use of a spectrum of enforceable alternative sanctions and supervision programs.

A. The New York City Community Service Sentencing Program

Vera's first major effort was to design, test and implement a program of community service sentencing in the Criminal Courts. Begun in the Bronx as a pilot project for displacing to an alternative sentence petty recidivists who would otherwise draw short jail terms, it is now operating in Manhattan, Brooklyn and Queens as well. The program has been developed in a way that combines funding from the City and the State in roughly the same proportions as applies to local probation expenses. Those funds,

supplemented with grants from private foundations, have also supported an extensive and sophisticated evaluation designed to measure the extent to which the program is exacting punishment from offenders who would otherwise have been incarcerated, to monitor any changes the program's operation might work on the deterrent effects of Criminal Court's previous reliance on short jail terms, and to estimate the cost savings that the City experiences through operation of the project.

The Community Service Sentencing Program has been refined over the developmental period, as data from the research has become available. The final research report was published in this contract year, by Rutgers University Press (Punishment Without Walls: Community Service Sentences in New York City, by Douglas C. McDonald; Introduction by Norval Morris.)

The report below summarizes Vera's development of the program, the adjustments made to its design and procedures on the basis of research findings, and the major features of what has been learned about the program's effects.

1. The Pilot

One of the most promising ideas for alternatives 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's Office launched a pilot project in 1979, to demonstrate how to target this alternative sentence on jail-bound cases and how to administer the sentence effectively, even 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 judges and prosecutors 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 super-vision 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% were black or Hispanic; and almost 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 resentencing data: although almost 90% 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% who satisfied the conditions of their community service sentences, the pilot 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% of these appointments were kept, some did go 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.

2. 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 over-crowding crisis on Rkers Island, Vera was asked to expand the project further, towards a capacity of 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. By FY 1986-87, the State share has increased to forty-five percent of the total budget -- now $1,344,763 -- adding allocations to strengthen the program's central administration as well as to expand the program to cover the borough of Queens. This financing has permitted the program to steadily build supervision capacity. Program capacity has reached 1300 sentences per year, at an average cost per sentence

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

of about $1000.

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 to secure compliance with the terms of the sentence. First, all reasonable assistance is offered to offenders to aid them in completing their 70-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 to the service sites as ordered exact compliance in most cases; when these efforts fail, a letter is presented to the court alleging non-compliance, 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 most of the 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 8 out of 10 of those so returned received jail terms, the program's enforcement record continues to encourge compliance by a difficult-to-manage offender group. This record, in turn, encourages judges' 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; 94 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.

3. Impact Analysis--Methods 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 operation of this alternative sentencing program affected the level of crime in the City?

From the beginning of the pilot project through August 1986, 5,011 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 10.8 prior arrests and 7.8 prior convictions, and 65 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 yields the least ambiguous results, it would 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 court.

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 a 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 dedendant, indicated by his or her community ties; and a determination that the defendant does not have a recent and significant record of violent criminal

behavior. Once this check of threshold eligibility has 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 represenrtatives 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 community service sites. Some cases are simply lost as happens when a case is held over for a night arraignment.

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 a sound method of measuring the proportion of participants who would have drawn jail sentences in the absence of the project.

But the reliable research strategy followed by the researchers on this project 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 systematially 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 convictions. 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 round of impact research performed during the evolution of the Community Service Sentencing Project, rejects whose cases were screened by project court representatives in the three initial 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, and the 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 varied from borough to borough,

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2 In 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 nth observation. The vector of the independent, or predictive variables, for the nth observation is Xn1, Xn2,

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 80% of the actual decisions; in the Bronx, the model predicted 87% of the deci-sions; and the best model that could be developed for Manhattan predicted 78% 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 sen-

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..., Xnp. Furthermore, XnB=Xn1*B1=Xn2*B2+...Xnp*Bp in which B=(B1...Bp) denotes the vector of regression parameters. The assumption of the model is that the probability that Yn-1 is 1/(1-exp (-XnB)). Here Xn1-1, so that B1 is the intercept parameter.

For simplicity's sake, the methodological description in the text above omits a step of some importance. The reject pool was randomly divided into two halves, and models were constructed using only one-half of the pool. What appeared to be the best model was then tested on the other half to see if, indeed, the model did have substantial power to predict successfully whether the reject was or was not sentenced to jail. Models were developed in each borough which were successful predictors, and they were then used to estimate what would have otherwise happened to community service project participants.

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 for these cases. 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 at arraignment because, these offenders given their prior records, would most likely 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.

tenced 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 78% to 87% 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.

4. Impact Analysis -- First Year Results

When these models were applied to the offenders sentenced to community service in calendar year 1982, it appeared that 44 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 44%, 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 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 48 cell/years in the Department of Correction's supply of cells for sentenced inmates.[3] The project's operations also reduced demand for deten-

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3 A 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 68 days in the Bronx, 70 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 would have been 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 was computed and subtracted from this definite sentence-minus-good-time figure. After these adjustments were

tion cells because defendants sentenced to community service spent less time in the system waiting dispostion. An estimated 17 cell/years were freed up in calendar 1982 by the project's impact on time to disposition.

Thus, the total number of cell/year saved by the project's displacement of defendants from Rikers Island could be estimated, with reasonable reliability, at 65 cell/year in calendar 1982. Attaching a dollar value to the reduced demand for jail cells is difficult. With Rikers Island at capacity, the easiest method (but one that inevitable overstates the economic value to the city of this impact) is to reckon the costs avoided as 65 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.

5. Impact Analysis - Calendar Year 1985 Results

With the impact analysis in hand, the underlying body of new knowledge about the dispositonal process in each borough (and the factors most powerfully predicting jail sentences there) permitted each project manager to try to adjust the program intake procedures so as to meet or better the program objective of 50% displacement from short jail terms. 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 20% in the Bronx, to 28% in Brooklyn, to 66% in Manhattan. In 1983, the focus of efforts to make the program more uniformly 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 them 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

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made, the time actually spent in jail by jailed rejects, subsequent to sentencing, in 1983, was estimated at an average of 38 days in the Bronx, 49 days in Brooklyn, and 63 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.

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 at arraignment. 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 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 20% to 52%.

In 1984, the program management staff, using the same techniques developed by the research department for the evaluation effort, completed a remodelling process for the other two boroughs -- Brooklyn and Manhattan -- and, using that data, can project the overall gains in displacement with accuracy for 1985. In Brooklyn, application of the remodelling technique shows that screening standards drawn from the research findngs are currently yielding a displacement rate for that borough of fifty-five percent; in the Bronx, current displacement is running at fifty-six percent, and in Manhattan, the statistical analysis shows current displacement at 59%.

Since operation in all three of the boroughs where the program has been operating for some time have now been re-examined using the modelling technique, the current city-wide rate at which community service sentences are displacing short jail terms can be fixed, by applying the borough displacement rates to each borough's 1985 intake. Then, with reference to the average pretrial detention time and average sentence length for the reject groups, the number of cell/days saved on each community service sentence can be calculated and the results aggregated. The result of these estimating calculations is that 115 cell/years were saved by project operations in the Bronx, Brooklyn and Manhattan in calendar year 1985 -- 61 cell/years were saved by jail sentence displacement and 54 cell/years were saved in reduced pretrial detention time. The Queens borough project was established in August of 1985 and, since that time, intake has been increasing steadily. However, the participant and reject pools have not yet grown to the volume necessary for application of the modelling technique that was used to measure the jail-displacing

impact of the other borough projects. To get a rough estimate of Queens cell/year savings, the displacement rate for Queens cases was assumed to be fifty percent; that assumption is reasonable because participant and case charateristics found to be related to "jail-boundness" in the other boroughs were virtually identical for the Queens offenders sentenced to community service during the year). Estimation of pretrial detention time and sentence lengths for Queens cases was accomplished by simply averaging the figures for the other three boroughs. Adding the results of these estimates to the city-wide calculations above, the cell/year savings increase by twenty-six, bringing the overall savings of jail cells to 141 for 1985.

In light of the roughly $40,150 of operating costs incurred per cell in the City's jails today, the program might be considered to have permitted the City to avoid $5,661,150 in the DOC operating budget.[4]

Of course if, in the absence of the program, the city were forced to increase new construction to provide 141 additional cells, the resulting costs would run much higher. In this context the program can be seen as averting expenditure of as much as $14,100,000 in capital outlays (assuming a construction cost of roughly $100,000 per cell).

In addition to the cost savings produced by the program's displacement of short jail sentences, the unpaid labor provided by supervised offenders, at no cost to the City's low-income neighborhoods, represents a further benefit which can be expressed in financial terms. Valued at a rate of five dollars per hour (a generous discount from union-scale wages for comparable labor) the approximately 69,000 hours of supervised labor performed by program participants during the current fiscal year will produce $345,000 worth of services for the benefit of the community.

6. Impact on Crime

Meanwhile, research attention has also been devoted to recidivism data. The pattern of offending for the petty recidivists who draw short jail terms in New York City is pretty clear. About half are re-arrested within six months of release

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4 Edward 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.

from jail. It turns out that these rates are not much affected by the nature of the punishment imposed: Being punished by community service does not make boy scouts and virgins out of petty recidivists, but neither does jailing them.

That a large proportion of project participants are rearrested again within a relatively short period of time after being sentenced to community service is disappointing, but not surprising. 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.

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 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 Vera Research Department's evaluative research revealed that, in the borough of Manhattan (where recidivism rates were highest), 51% of those sentenced to community service between September 1981 and March 1982 were rearrested within 180 days of being sentenced to the project.[5] 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, the researchers 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 49% of those released from jail were rearrested within 180 days of their release, indicating that jail sentences apparently do not deter this class of petty offenders from further crime any better than

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5 Douglas McDonald, Punishment Without Walls? Community Service Sentencing in New York City (Rutgers University Press, 1986).

do sentences of community service.[6] Despite the apparent sad equivalence of the longer-term deterrent and rehabilitative effects of community service and short jail terms, for this gourp of offenders, it was obvious that some proportion of the crimes committed by those sentenced to community service would have been averted if the offenders had initially been jailed instead. (The importance of this question is reduced, but not eliminated by the fact that the periods of incapacitation for the petty recidivists who are jailed -- 30, 60, or 90 days -- are very short, and the crimes they commit upon release are almost entirely non-violent and at the lowest end of the economic scale.)

In 1984, project managers began to consider new ways to try to reduce the frequency of post-sentencing recidivism. Rather than trying to "change" petty recidivists 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 theiving life-style in the very recent past. Of course, most of the defendents who had been considered eligible for the project had long arrest records (more than half had been arrested eight of 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 short jail terms would have been ordered in the absence of the community service sentencing option.

The project conducted a fairly detailed research effort to see if a set of screening rules could be designed to screen out the offenders most likely to be active in the period right after sentencing on the current case. The Vera Research Department was asked to draw a large sample of program participants who had been sentenced to the project recently, and to apply a number of different criteria in reducing the rates of subsequent criminality among these left in the pool. The Research Department was also asked to estimate, for each possible set of screening criteria, the impact on the project's "displacement rate" -- the proportion of participants who would have gotten jail in the absence of the program's intervention. Researcher's began by searching for characteristics that were associated with being arrested in the months immediately following sentencing to the program, and then constructed various selection criteria based on those identified characteristics.

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6 Ibid.

A comparison of the results of the different criteria pointed to a formula which both preserved the program's displacement rate and kept the pool of eligibles as large as possible, while winning a modest reduction in subsequent recidivism. This rule provides that where an otherwise eligible defendant has a record of more than 12 prior arrests and, at the same time, one or more arrests within the previous 60 days, he or she will be excluded from consideration for program participation.

Although the exercise was relatively sophisticated, the Research Department was unable to develop any predictive rules that reduce more than ten percent the rate of post-sentence petty offending by those sentenced to community service. It is simply very difficult to determine which of the relatively active low-level offenders who comprise the sentence's target pool will or will not be rearrested in the near future. Nevertheless, the rule described above has been implemented in all four borough projects. Project staff, in the second half of the last fiscal year, therefore began making programmatic adjustments to increase the role of each borough's support services coordinator and the intensity of the services provided to sentenced offenders during and after performing the required unpaid community work. The hope is, by better tying offenders to jobs and other elements of legitimate life-style by the time they complete community service, to drive the re-arrest rate among them well below the rearrest rate of those with similar prior records who are sentenced to short periods of incarceration.

B. Community Service Sentencing -- Research and Evaluation

Until the New York City Community Service Sentencing Program, very little attention had been given to evaluation of such sentencing programs, even though their use in some jurisdictions stretches back to the late 1960s. By evaluating the courts' use of the sanction as it was designed and implemented in New York City, and its effects on those ordered to serve it, Vera's Research Department expanded the field's understanding of this alternative sentence, its suitability for recidivist property offenders, its impact on the offenders themselves, and the dynamics of sentencing in the Criminal Court. The research effort continued for four years, throughout the period of the project's expansion into the Brooklyn and Manhattan courts, and culminated with the publishing by Rutgers University Press in the summer of 1986 of Punishment Without Walls: Community Service Sentences in New York City, by Douglas Corry McDonald, Project Director and Senior Research Associate at the Institute.

Introduced by a foreword written by Norval Morris, retired Dean of the University of Chicago Law School and one of the

nation's leading criminologists, the book traces the development of community service in this country and abroad and examines the historical context within which the practice emerged. It then turns to a close examination of the New York City experiment, as it was operating in the first three boroughs. Relying on a statistical analysis of judicial decisions in more than a thousand cases, and augmented by interviews with judges and attorneys and many hours of in-court observation, the research staff developed an innovative methodology for assessing the impact of sentencing reforms, described in the preceeding subsection of this Status Report.

The research methodology they developed permitted relatively precise measurement of the extent to which the program's objective was achieved: the imposition of community service not only in cases where less punitive non-incarcerative sanctions would have been imposed, but also in at least half of the cases sentenced to community service, where short jail sentences would have been ordered. The research results also permitted calculation of the costs and benefits of the altered sentencing practices in each borough.

The study also explored the offenders' perceptions of the community service sentence: Do they see it as a fair response to their law breaking: Do they feel they are being punished even though they are not sent to jail: Do they feel they are making restitution to their victims, or is the connection between their service to the larger community and the victim's loss too tenuous to be observed? These and other questions were examined systematically in interviews with nearly one hundred convicted offenders sentenced to perform community service.

The sentences' effect on subsequent criminality was studied by monitoring whether or not offenders were re=arrested within six and twelve months of being sentenced to community service by the Bronx, Brooklyn, and Manhattan Criminal Courts. To compare the relative crime control effect of community service and imprisonment, the re-arrest patterns of offenders sentenced to community service were compared to those of persons with virtually identical records who were sentenced to jail and then released.

Having a sophisticated professional evaluation effort underway during the critical development period of this demonstration project was very unusual, but research findings contributed directly and substantially to the success of the project itself. Because the Research Department needed a well organized data base, containing detailed information about the project's operations and the court's workings, the researchers developed for the project a computerized management information system. It turned out that this relatively sophisticated system provided the project managers with the data they needed to monitor the progress,

and in some instances, the difficulties, experienced by the project in each of the first three boroughs. Indeed, this management information system served, in 1985-86, as the prototype for a series of similar systems (designed by Vera, the Office of the Coordinator of Criminal Justice, and the State's Division of Probation and Correctional Alternatives), for use by the other "alternatives to incarceration" programs getting underway in the City and across the state.

The development of this management information system, and the Research Department's reporting to the project's management of the early research findings, provided the project managers with the information they needed to correct intake criteria each of the boroughs and, thereby, to meet jail-displacement goals, as described in the program narrative above.

Copies of Punishment Without Walls have been distributed to interested judges, prosecutors and defense attorneys in the New York City System, and to personnel at the Office of the Coordinator of Criminal Justice and the Office of Management and Budget who have been involved in development of the program and specification of the research questions. (In 1984 and 1985, earlier manuscripts drawn from this research effort were distributed in the same quarters.)

C. Technical Assistance to the City and the State on Monitoring and Evaluating Alternatives to Incarceration Developed Under a New State Initiative

The correctional facilities in the State of New York, both at the state and the local level, have suffered from chronic and serious overcrowding. To develop State responses to this problem, the Governor established a Task Force on Alternatives to Incarceration. Vera staff was represented on and worked with this task force in 1983 and 1984. In major part as a result of the work of this task force, the State legislature amended the Correction Law, the New York City Criminal Court Act and the Executive Law (Chapters 907 and 908, in the Laws of 1984), to provide financial and other support to local correctional agencies in the devleopment of alternatives to incarceration. The legislation states:

> The existence of programs which offer alternatives to pretrial detention and alternatives to incarceration upon sentence are essential if our courts are to have suitable options other than incarceration at both the pretrial and sentencing stages. Such programs simultaneously protect the community, foster law-abiding behavior for offenders and represent an important com-

> ponent in the overall approach to the overcrowding problem. Such programs are integral to effective criminal justice planning and represent both sound penal and cost-effective fiscal policies.

In order to promote the development of alternatives to local incarceration, the State authorized the Division of Probation and Correctional Alternatives (DPCA) to make awards to units of local governments. Counties receive the funds through a contractual process with the State, after submitting and securing DPCA approval of a local community corrections service plan. For the first year, 43 counties submitted plans, which proposed 60 alternatives programs. Each plan contained: an analysis of the jail population, an analysis of recent overcrowding problems, a summary of existing alternatives programs, and specific proposals for the use fo State aid, including a description of services to be provided, characteristics of the target populations, steps to be taken to identify eligible participants, and the goals and objectives to be accomplished through the programs.

The Division, in turn, is responsible for: the initial allocation of monies to the various counties, in response to the proposals received; monitoring the local programs and related activities of the counties; evaluating the success of the legislation in terms of its impact on reducing jail overcrowding; and reporting to the legislature. The specific reporting requirements for DPCA were also outlined in the legislation as follows:

> Such report shall include, but not be limited to, the status of the development of such plans, the approval and implementation of such plans, the success of the programs in terms of their utilization, effect on jail population and sentencing decisions together with any recommendations with respect to the proper operation or improvement of planning and implementation of effective alternatives to detention and alternatives to incarceration programs in counties.

In February, 1985, the DPCA asked the Vera Institute to assist in developing a system for monitoring and assessing the implementation and effects of alternatives programs and projects supported with State funds. New York City was to receive (and continues to receive) several large grants from DPCA. Therefore, the Office of the Coordinator of Criminal Justice and Vera have an interest in DPCA's administration of the State's effort to develop effective alternatives. The interest is not confined to how the State's monies are spent and how the programs are monitored in the City; because New York City is interested in learning, from experimentation elsewhere, what works and what

does not work as an alternative to incarceration or detention, the City has an interest in the State avoiding grants for programs that are poorly designed or cannot be subjected to monitoring and research of that kind that produces useful knowledge. Thus, in an effort to help improve the State's administration of this program, and to increase the useful knowledge flowing to the Coordinator's Office from the monitoring of projects in the City and elsewhere in the State, Vera accepted a small technical assistance contract (approximately $25,000) from DPCA to help finance work on appropriate administrative procedures and monitoring evaluative data-collection schemes. Staff began work under the contract in September, 1985, and completed it in May, 1986. A representative of the Coordinator's Office participated throughout.

In developing a monitoring system that would adequately capture all of the necessary information about the diverse programs being funded under the Alternatives Bill, Vera's first task was to develop and get consensus on the specific program models into which such programs could be categorized. Vera staff determined that the 60 different programs being funded by DPCA could be categorized into six general program types, as follows: pretrial services, community service sentencing programs, management information systems, defender-based advocacy programs, services for special offender groups, and other post-conviction non-custodial alternatives. DPCA was not interested in Vera working on a monitoring system for projects only developing management information systems, so that program type was dropped. As Vera's work on monitoring systems for the different programs progressed, it seemed most efficient to combine the last two program types into a single group -- special alternative programs. Thus, the monitoring system designed by Vera used four program types: pretrial services, community service sentencing, defender-based advocacy, and special alternative programs. (New York City operated projects in three of these program areas.) The monitoring system developed by Vera established uniform reporting requirements for all projects in each program area.

The information to be reported concerned: The demographic characteristics of persons considered eligible for each project and of those who actually enter it; the sources from which the cases are referred; the nature of the charges for project participants and rejects; the number of people who are terminated successfully and unsuccessfully from the project, and a general description of the reasons for termination; the number who are referred to other agencies for services and the kinds of services which are sought through such referrals.

In addition, all projects were asked to provide narrative descriptions of the program design and the process of implementation. All of this information is to be reported to DPCA on a

quarterly basis for participating offenders or defendants during the quarter, and cumulatively for all those handled during the year. To assure that the critical pieces of information were collected according to uniform definitions, all projects are to be required to complete a Case Monitoring Form (CMF), designed by Vera and promulgated by DPCA, on each person considered eligible for participation. Those forms will create the data base from which quarterly reports are prepared and will be maintained by the project operators for use in later evaluations.

Vera's staff then designed the coding manuals and related forms, working in conjunction with DPCA staff and staff from the Office of the Coordinator of Criminal Justice. Both the CMF and the reporting forms in each program area were then edited further by DPCA and sent to the City and to County planners and program operators in May, 1986.

The monitoring system should provide a variety of benefits to officials of both local and state government, including:

a) It requires project operators to collect and reflect on performance data. This process should sharpen their awareness of project deficiencies and stimulate the development of corrective strategies.

b) The same information will alert the Coordinator's Office and DPCA staff to those projects in which implementation deviates significantly from the expected design or schedule and, thereby, provoke corrective actions.

c) Officials on both levels of government will be able to examine the characteristics of those taken into the alternative projects and to estimate the extent to which the population might have been incarcerated in the absence of the project. Over time, this process should lead to a series of adjustments in the projects' intake criteria and procedures, to increase the degree to which they function as jail substitutes.

d) Project operators, the Coordinator's Office and state officials will be provided with a measure of unsuccessful terminations and rearrests. This information will be useful for considering modifications in the project's intake, supervision and service procedures.

e) DPCA staff and the Coordinator's Office will be able to compare similar projects operating in different criminal justice contexts or using different supervision or service techniques. This kind of analysis will help inform the design of new alternatives to incarceration and detention, or the re-design of existing ones.

This development of a uniform, rational monitoring system is not, by itself, adequate for assessing the proportion of any project's participants who would have been incarcerated in its absence, or the comparative rearrest rates among any project's participants and a comparable group of subject's handled in other ways by the criminal justice system. These evaluative questions are of critical importance to both the City and the State. Therefore, Vera staff prepared a memorandum offering a number of recommendations for constructing a system of program evaluations. The memorandum identifies the purposes for which an evaluation system is needed, the essential evaluative questions that must be addressed, and alternative approached to designing and executing such evaluations. Finally, the memorandum outlined how DPCA or the City could implement such evaluations while assuring that the uniqueness of each local project is respected.

D. Use of Fines as a Criminal Sanction - National and Cross-National Research

1. The Research Context

With all the research done on the American criminal justice system over the last 20 years, including a great deal of work on criminal penalties, the fine as a sanction has been virtually ignored despite indications that it is used a great deal, for a wide variety of offenses and offenders. In response to concern about this knowledge gap, expressed at the national level by the National Institute of Justice and at the local level by the Coordinator of Criminal Justice, the Vera Research Department began to explore this relatively uncharted area several years ago.

In collaboration with researchers at the Institute for Court Management in Denver, and at Vera's London Office, Vera has been examining laws related to fining, court practices in the use of fines, attitudes about fine use and enforcement, and the administration of fine collection in American state and local trial courts, in U.S. District Courts, and in the courts of England, Sweden and the Federal Republic of Germany. The research in the United States has been funded by the National Institute of Justice, with additional support coming from Vera's contract with the City of New York to do a more intensive empiracal study of the City's use and enforcement of fines. The European research has been carried out under grants from the German Marshall Fund of the United States, the British Home Office, and the National Institute of Justice.

The statutory law of all 50 states and the District of Columbia, federal statutes, Congressional proposals for revisions

of the law, and the body of relevant case law were reviewed. Extensive site visits were made to more than 30 courts, to observe sentencing and enforcement activities and to interview key actors in this process about their procedures, their problems with these procedures, and their attitudes toward fine use and enforcement. In addition, through the Institute for Court Management a telephone survey of 126 courts in 21 states was conducted, including interviews with court clerks and administrators about the extent of fine use in their jurisdictions, the types of offenses for which fines are used there, their collection and enforcement practices, and their attitudes toward the fine as a criminal sanction. A more detailed examination of the use of fines in New York City's Criminal and Supreme Courts was undertaken under Vera's contract with the City, involving a sample of all sentences imposed in these courts during a one-week period in 1979; the Research Department used this data base to analyze the data on all cases in which a fine was imposed, and to examine the collection efforts undertaken in these cases over a one-year period after sentencing.

Finally, because the use of fines as a criminal sanction has increased dramatically in Europe during the last century, particulary in England, Sweden and the Federal Republic of Germany, the available English and foreign-language literature on fine use and collection practices in these countries was reviewed, with particular emphasis on the innovative day fine system in Continental Europe.

Separate, detailed working papers have been prepared on each of these efforts; together they represent the most extensive body of written material on fine use and enforcement practices available in the criminal justice and legal literatures. They have been compiled as a companion volume to Vera's Final Report on the project. The Final Report, along with an Executive Summary, were published by NIJ in 1984. One working paper, A Report on an Empirical Study of Fine Use, Collection and Enforcement in New York City Courts, which was made available to local users as a Vera publication, is a qualitative and quantitative study of the fine as a sanction in the criminal and supreme courts of New York City.

The main volume of the Final Report discusses the major issues raised by the materials collected in the working papers, recommends changes in law and practice, and outlines potential pilot efforts to improve operations of the fining system. The report is centered on an analysis of the way fines are currently used in relation to the other sentencing options, and the various philosophical and theoretical perspectives and legal and practical constraints that affect the use of fines as punishment. The report explores issues surrounding imposition of fines on poor and indigent offenders, including a review of the law, theory and

practice affecting monetary penalties for the indigent and the experience of various jurisdictions with the use of work programs, property seizure and prison committal as responses to default. Because the "day fine" system of several European countries is often cited as an innovative method for imposing fines with equity, this approach is discussed at length and new data on actual operation of day fine systems is reviewed for the first time in the English language. The report also discusses the use of monetary restitution, because it raises some of the same problems as the use and collection of fines.

A key question, given the difficulties of introducing or expanding "alternative" sanctions (discussed in the Introduction to this Section 5 of the Status Report) is the extent to which fines have proved to be, or could be made to be, enforceable. The Final Report discusses what has been learned about fine collection practices in American courts and the extent to which our courts have effectively focused their efforts on enforcement and on the variety of enforcement methods statutorily available. The role of jail as a fine enforcement tool (the "miracle of the cells"), and its use as a fall-back punishment in cases of fine default, is important in this context -- and problematic. But by describing the extent to which various court systems are currently attempting to enforce fines without recourse to jailing defaulters, some ideas for policy and pilot programs are beginning to surface, and the report contains a full chapter presenting recommendations for improvement of practice both in the use of fines and in their enforcement.

This work is of continuing interest in the New York City context, not only because fines are much more widely used here (and more successfully collected) than many practitioners thought, but also because their enforcement does present serious administrative problems as well as an important source of revenue. In New York City, the sample of Criminal Court cases showed that 31% of all sentences were (excluding summons and most traffic offenses) fines, including 66% of sentences for those convicted of gambling offenses, 40% of those convicted of disorderly conduct and loitering, 39% of those convicted of drug offenses, 27% of assault convictions, 20% of the prostitution convictions, 16% of the theft convictions, and 14% of the trespass convictions. (Only about 5% of all Supreme Court sentences are fines, and these cases tend to be non-violent felonies involving drug sale and possession, destruction of property, gambling, driving while intoxicated, assault without serious injury, and possession of a weapon when there are mitigating circumstances.) And fining is big business. In 1980, New York City Criminal and Supreme Courts collected almost $4.5 million in fines, <u>not</u> including fine collections for parking violations and minor traffic offenses. (Much of the fines revenue is produced by relatively small fines; in Criminal Court, fines range from $25 to $250 with $50 being the modal amount.)

It is harder to know how efficiently New York's revenue collection system is administered. No American court studied in the course of Vera's research, including New York City's courts, routinely generated information about the amount of fines collected as a proportion of the amount imposed; none had a record-keeping system that permitted it to do so; and no more than a handful of courts had even the most primitive automated record-keeping systems to monitor fine collections and fine enforcement efforts. However, the one-week research sample of New York City courts permits a calculation of the collection rate for the Criminal Courts, at one point in time. In this sample, 74% of the total fine amount imposed was collected by the courts within one year of sentence; of the defendants fined, 67% paid in full (46% without issuance of any warrant for failure to appear in court to pay the fine). These are stunningly high collection rates, given the popular perception that a fine is neither enforceable nor enforced, and is not a workable punishment.

Because so little systematic information exists on fine enforcement and revenue collection in the United States, Vera has been conducting empirical research in this area in England. This study, funded under a separate grant from the National Institute of Justice and carried out in conjunction with Vera's London Office, describes in detail the fine enforcement strategies used by four magistrates' (or lower) courts in England. Drawing upon systematic samples of fined cases and upon extensive, in-depth interviews with all the court and court-related participants in the enforcement process (including the police), the study documents how these courts set fine amounts, monitor payments, serve subpoenas, and enforce the fine sentence in the event of nonpayment.

Because the English lower courts use fines with defendants who are often repeat offenders charged with relatively serious offenses, many of whom are unemployed or on public relief, this study provides useful insights into the administrative problems of fine collection with a population at high risk of default. It also documents, in considerable detail, the operation of various enforcement strategies and their relative success with this population, including the effectiveness of property seizure and the threat of imprisonment as methods of enforcement. These coercive techniques are of particular interest here, because the English criminal justice system has experimented with them more than any American system has. In conjunction with the work already done in the United States and in New York City, this study, which has been completed and is scheduled for publication by NIJ later in 1986, should prove useful to the formation of new and better policy and practice in fine enforcement specifically in lower court sentencing generally.

Some of the key findings and policy conclusions discussed in the report include:

The fine, practically and philosophically, is at the core of English sentencing policy, including its increasing use as the courts' major alternative to imprisonment; numerically the most frequent punishment imposed in magistrates' courts, fines are used extensively to punish offenders who are both at risk of imprisonment because of their prior records or the seriousness of the current charges and at risk of default because of their limited financial means. The heavy use of fines by a court appears to be inversely related to its use of custodial sentences.

The fine is used as the sole penalty in most cases, rarely in combination with custody or probation (the latter being imposed infrequently in England and reserved for cases in which social services are considered likely to improve the offender's situation measureably). However, fine sentences often include amounts for restitution, court costs and other fees. At sentencing, these amounts are usually set separately by the court, which tends to ignore the magnitude of the total sum it is levying on the defendant. Nevertheless, during the collection and enforcement process, these amounts typically are expressed as a single sum due the court -- "the fine" -- and are not treated by the court or viewed by the offender as separate dimensions of the sentence.

In setting fine amounts, magistrates emphasize the severity of the offense (including, for purposes of restitution, the amount lost by the victim or the degree of injury suffered); as a result, magistrates often do not review thoroughly all the information on the offender's means that is readily available to the court. Thus, when imposed as a sanction for offenders at risk of imprisonment because of their charges and their prior records, fine amounts tend to be high; while these amounts vary across courts and with the means of the offender, offense severity appears to be the key factor influencing the total amount of the sentence.

Not surprisingly, the extent of voluntary payment and the degree of success magistrates' courts have eliciting payment tend to be directly related to the size of the total fine obligation and, particularly, to the degree of compatibility between the amount imposed and the means of the offender. Discussions are underway in England on ways to improve the sentencing process by encouraging magistrates to make greater use of the information on offenders' means (income adn assets) already available to the sentencing

court, including the introduction of a formal "day fine" system (based on those found in Scandinavia and the Federal Republic of Germany). Further administrative attention is also needed to regularize the availability of information about financial capacity and to provide the court with feedback on defendants' prior fine payment behavior, in order to expand the role of accurate assessment of financial condition in the sentencing process.

Virtually all the empirical evidence collected to date supports the expectation in the English sentencing system that fines -- when set rationally in relation to means as well as offense severity -- can be collected from offenders, even when they have severely limited financial resources, if the collection and enforcement process is swift to identify and respond to non-payment and if it moves systematically through the variety of enforcement options at the court's disposal. Successful fine enforcement strategies employed by the courts studied emphasize continuous post-sentence supervision of fined offenders, beginning with routine contact and notification procedures that make it clear that the court views the fine obligation seriously and unequivocally expects payment. Successful enforcement strategies are characterized by terms for fine payment that are short (rather than longer installment plans), (and by ensuring that, when the terms of payment are not met, the court's response is rapid and personal, with a steady progression of responses characterized by mounting pressure and increasing threat of more coercive techniques: first the seizure of property (distress) and, finally, committal to prison.)

In England, the fine is quintessentially a sentencing decision to punish by means other than imprisonment. While threat of imprisonment appears a necessary coercive tool in the court's repertoire of enforcement devices, English sentencing policy holds that its use should be limited -- for jurisprudential as well as practical reasons -- to the blatantly defiant offender. Vera's research suggests, however, that few courts exhaust all other enforcement options before resorting to committal; in particular, many fail to try distress, although material deprivation via the seizure of property is more in keeping with the original sentencing intent than is imprisonment. More magistrates' courts in England are experimenting with distress, especially employing private entrepreneurs as collection agents. The process appears to be an effective enforcement tool, operating largely by threat as do most coercive devices. Although problems remain, they are largely of a technical nature and they can be and are being addressed.

> When imprisonment appears the only remaining alternative to enforcing a fine sentence, the better court practice appears to be to make certain -- by review of the offender's payment record and a pre-sentence report -- that non-payment results from willful disregard of the court's order and not the excessive size of the fine amount.
>
> From a policy perspective, devising and implementing a successful fine setting and enforcing process confronts a court with administrative tasks that are unlike the other managerial activities it faces; they are more complex and involve virtually all levels of court personnel as well as a myriad of other criminal justice and civilian agents. While court administration is an emerging field on both sides of the Atlantic, the English experience suggests that far greater attention must be paid to professionalizing fines administration if the fine is to become a more important and useful criminal sanction there or here, particularly if it is to be more frequently imposed in lieu of jail. While professionalization of fine enforcements need not mean more or different court personnel, it does mean greater specialization and different training. Most importantly, greater professionalization implies a basic policy change that makes fine administration a higher criminal justice priority than it is now and that centralizes the responsibility for fine outcomes. Such a policy shift, whether carried out in England or adopted in America, would require courts to experiment both with incentive structures and new organizational linkages to facilitate successful fine enforcement and thereby to enhance the credibility and utility of this sanction.

A resurgence of interest in fines is evident at both the Federal and the local level in this country. Vera's research informed the drafting of the Criminal Fine Enforcement Act of 1984 and relevant provisions in the Comprehensive Crime Control Act of 1984, to ameliorate administrative and other problems that impeded greater use of fines and collection of fine revenue in the Federal criminal justice system. The administrative difficulties which remain now have a much greater potential for resolution. The result has been an increase in the use of the fine in the federal courts, as well as the creation of a testing ground for further reform in fine imposition and administration there. The United States Sentencing Commission (currently drafting guidelines for sentencing in the Federal Courts and which has focused a great deal of its attention, in the "alternatives" area, on fines, has drawn heavily on Vera's earlier research and devoted considerable attention to European "day fine" systems in its own working papers.

At a recent conference of key prosecuting attorneys from the mid-west region sponsored by the Prosecuting Attorneys Research Council, an introduction to the "day fine" concept elicited positive responses. Five of the prosecutors have agreed to introduce authorizing legislation in their States during the winter term, which will include Minnesota, Michigan, Indiana, Wisconsin and Iowa.

2. Development of a "Day Fine" Pilot Project in New York City

The groundwork having been laid by Vera's earlier research, Vera has in recent months been planning a test of the "day fines" concept in the Criminal Court of Richmond County. At the conceptual level, a day fine system has obvious attractions: It enables the judge to incorporate principles of equity with the principle of proportionality in determining the fine amount. And it also seems to offer advantages going beyond increased fairness: A system which expressly tailors the amount of a fine to an offender's ability to pay (while preserving a proper relationship between the burden of the fine and the seriousness of the crime) ought to increase the efficiency of collection and enforcement efforts, enhance the credibility of the court, and broaden the utility of the fine as a criminal sanction. The possible benefits of such a result include an increase in fine revenues and a shift to fines from over-reliance on short jail sentences. (Both of these benefits were dramatically realized from the introduction of day fines in the courts of West Germany in the mid-1970s.)

Vera's planning staff have developed a plan for adapting the West German version of the European day fine system to the Staten Island Criminal Court. In the earlier Vera research on New York City's use and collection of fines, this court was found to make greater use of fines in sentencing than the other boroughs of New York City, and the borough's record on collection and enforcement of fines was a positive one. The reasonable size of the court, the broad variety of criminal matters it handles, and the relative economic and social stability of the Borough's general population make it an appropriate site for experimentation of this kind.

After several months of preliminary data-collection and interviewing of Staten Island judges and prosecutors, Vera sought and obtained from the National Institute of Justice a six-month planning grant. The grant will support this work from November through April. Preliminary discussions with NIJ staff indicates that funds are likely to be made available to Vera to conduct a twelve-month pilot, if the planning phase goes well. The NIJ-funded planning will consist of: (a) intensive review and docu-

mentation of existing court procedures and records in Staten Island, to clarify this court's current practices in imposing and enforcing fines; b) development, in conjunction with local bench and bar, of detailed guidelines for imposing day fines and development of an appropriate formula for setting the economic value of an individual's day fine units; c) design of a computerized mangement information system to be used in recording the volume and tracking the outcome of day fine cases; and d) development of a reliable and quick method for gathering information about defendants' means.

E. The Bail Bondsmen and Bail-Making Research Project

The Vera Institute received an award from the Pro Bono Publico Foundation towards support of an investigation of the role bondsmen play in the bail-making process in New York City. The funds were used to make arrangements with court, criminal justice and correctional agencies to review bail-making records; to add information on the form of bail-making to a unique data base, compiled by the Criminal Justice Agency, that provided complete court processing and detention information for a sample of New York City defendants; and to run some initial analyses on that data base. Funds from Vera's contract with New York City supported additional analyses. A final report was published in May, 1986; it has been distributed to some of the judges and City officials known to have an interest in jail overcrowding and its relationship to bail-setting practices and bail-making patterns. It will be widely distributed in November, in conjunction with scheduled consideration of it by the Association of the Bar of the City of New York. (Toward the end of the year, the text will be published in the Justice System Journal.)

This study found that the role played by professional bondsmen has greatly diminished over the past 20 years. The number of licensed bondsmen in New York State dropped from a high of 191 in 1968 to 56 in 1985. The research revealed that less than two percent of potential bail-makers in a 1980 sample used the services of bondsmen to make bail. Although bondsmen were more likely to handle high-level than low-level bails, their involvement in the bail-making process was so limited as to have little effect on the extent of pretrial detention of any defendant subgroup.

In the absence of opportunities to post bond, defendants who make bail do so in cash. Many post the complete face amount of bail. Others, for whom judges specify "cash alternative" bail amounts, pay less than the face amount of bail to gain release. Cash alternative amounts effectively discount the cost of release for many defendants.

The research revealed that the likelihood of bail-making was directly related to the effective cost of bail, which was

strongly determined by judicial decisions to set or not to set cash alternative bails. Defendants for whom cash alternative bails were set were far more likely to make bail than those for whom they were not set. But the setting of cash alternative bail by New York City judges is less consistent and less proportionate than decisions about granting or denying ROR (release on recognizance) or decisions about the face amount of bail. The likelihood of cash alternatives being set had little relationship to charge severity and varied greatly by borough. These findings raise the possibility that inconsistencies in the setting of cash alternative bail may differentially affect the prospects of release for similarly-situated defendants held in detention.

In recognition of reduced bonding opportunities created by the virtual withdrawal of bail bondsmen from practice in the New York City courts, it seems desirable to learn more about how judges make decisions about setting or not setting cash alternatives. With the jails of New York City filled to overflowing virtually year-round, exploration of means for enhancing the orderly and equitable release of defendants held on bail seems appropriate. The report of this research project is intended to provoke and inform discussion of these possibilities.