A Report to the Mayor's
Criminal Justice Coordinating Council

The Problem of Overcrowding in the Detention Institutions of New York City:

An Analysis of Causes and Recommendations for Alleviation

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January 1969

Vera Institute of Justice
New York, New York

ACKNOWLEDGMENTS

This report could not have been prepared without the gracious cooperation of many individuals. The author wishes to extend a sincere thank you to Commissioner of Correction, George F. McGrath; Chief of Operations of the Department of Correction, Anthony Principe; Chief of the Records and Statistics Division of the Department of Correction, Saul Brandler; Director of Probation, John A. Wallace; Chief of the ROR Division of the Office of Probation, Henry Smith; Senior ROR Investigator in Manhattan, William Hawkins; Administrative Judge of the First Judicial District of the Supreme Court, the Honorable Saul S. Streit; Assistant District Attorney for New York County, John Keenan; Chief Probation Officer for the First Judicial District of the Supreme Court, Elmer Reeves; Supreme Court Probation Officer, William Henry; former Attorney-in-Charge of the Legal Aid Society, the Honorable Anthony Marra; Chief Examiner of the Bureau of the Budget, Harry Bronstein; Assistant to the Mayor, Michael Dontzin, and Police Liaison Officer at the Vera Institute of Justice, Lt. Michael Farrell.

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INTRODUCTION

On August 7, 1968 Commissioner of Correction, George F. McGrath, wrote to Mayor John V. Lindsay to describe an unexpected and alarming rate of increase in the population of the city's detention institutions. These institutions, which house prisoners awaiting court action, have a normal male detention capacity of 2177 persons. During the non-crisis conditions of January 1968 they accomodated a daily average of 4,509 prisoners and, based on figures for the past three years, anticipated an average rate of increase of 18 per month with seasonal fluctuations. By the end of August they were forced to accomodate an average of 6,484 persons per day, having experienced an average increase of 282 prisoners per month. Of ever greater concern was the fact that this rise in population occurred during a season of anticipated decreases in the detention population based on previously consistent seasonal trends. After reaching a peak in September, the detention population has declined, once again in contradiction of historical cycles. Nevertheless, overcrowding remains acute.

This population explosion has had serious consequences. Already overcrowded institutions have become even more burdened, resulting in impairment of security, strains on personnel, and destruction of prisoner morale. The Department of Correction has been forced to lodge over 2,000 detention cases in facilities on Riker's Island, previously used only for

sentenced prisoners. The remoteness of this location hampers the preparation of defenses by lawyers and visiting by families and magnifies the problem of transporting prisoners to court.

In early September at the request of Mayor Lindsay, Justice Bernard Botein summoned the relevant agencies involved in the criminal process to a meeting at the Appellate Division to discuss the crisis. Following the September meeting of the Mayor's Criminal Justice Coordinating Council two weeks later, the Vera Institute of Justice undertook a study of the overcrowding problem. Contained herein is an analysis of that problem and a series of recommendations to the Criminal Justice Coordinating Council for its alleviation.

A substantial part of this report consists of statistical analysis. Such analysis is weakened by the dearth of current statistics throughout the criminal justice system in New York City. For example, little is known about the persons who make up the detention population. While the Department of Correction can supply the number of persons in detention and the distribution of prisoners by court and county of jurisdiction, they cannot supply current summary data on many subjects critical to a proper understanding of the detention problem such as the presence or absence of parole recommendations, bail amounts, pending charges, length of detention, and previous criminal records. Even when data of this nature can be compiled from independent sources, one must face the tasks of reconciling

inconsistencies, eliminating overlaps, and intercorrelating numerous variables. The fault does not reside within any single agency but rather in the obsolete manual systems used for the collection and retrieval of statistics and in the lack of any overall, coordinated, interagency network of criminal justice intelligence. It should be stressed that many of the problems which plague the judicial and correctional systems of New York cannot even be articulated, let alone solved, until the proper kinds of data are gathered, correlated and analyzed with the requisite degree of sophistication.

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SUMMARY OF FINDINGS AND RECOMMENDATIONS

The dramatic rise in the detention population in 1968 has been caused by sharp increases in (1) the average monthly number of admissions to detention, and (2) the length of pretrial detention. During the first eleven months of 1968 each variable increased more than 13 percent over the 1967 figures, resulting in a rise in the average daily detention population of 27 percent.

The first cause, the increase in admissions to detention, has been produced by a rising incidence of crime and hence a greater number of arrest cases which come before the courts and result in commitment to detention. There has not been an increase in the percentage of cases remanded to custody after arraignment, indicating that growing judicial severity at arraignment is not responsible for the rise in admissions.

The second cause, the increase in the average length of custody, reflects the greater amount of time needed to dispose of cases within the judicial system. The factors producing this increase cannot easily be quantified. They include archaic scheduling and rescheduling procedures, misallocation of judges' time, and dilatory tactics on the part of counsel. It is also possible that recent decisions of the United States Supreme Court have encouraged a more widespread use of pretrial motions, thus lengthening case-processing time.

Listed below are the principal findings of this report and a series of recommendations, based on those findings, which are designed (1) to reduce the number of persons in pre trial detention, and (2) to reduce the length of such detention.

A. Increasing Reliance by Judges on Recommendations for Pre trial Parole of the Office of Probation

Based on findings that:

(a) pretrial release not only enables a defendant to retain his freedom during the pendency of a criminal proceeding but materially affects the probability of conviction and the severity of sentence. Thus the bail setting process, apart from the ultimate determination of guilt or innocence, is perhaps the most crucial stage of a criminal proceeding for a defendant;

(b) pre trial parole enables the release of substantial numbers of defendants who, because of an inability to post money bail, would otherwise be committed to detention;

(c) defendants released on pre trial parole in conjunction with a favorable recommendation from the Office of Probation have a rate of non-appearance of 3.1 percent, significantly lower than rates for defendants released on pre trial parole who either were not investigated or not recommended by the Office of Probation;

(d) the judiciary is generally unaware of the significant variations in the rates of non-appearance among recommended, non-recommended, and non-investigated defendants and no agency is charged with the responsibility for regularly analyzing, summarizing, and reporting such data and other information which measures the rationality and effectiveness of the bail setting process;

(e) pretrial parole is being granted in Manhattan in only 43 percent of the cases in which it is recommended by the Office of Probation;

(f) pretrial parole is denied and high money bail set in many cases in which the judge apparently desires to impose preventive detention which is neither authorized by the Code of Criminal Procedure, nor based on reliable indicia of dangerousness, nor even-handed in its impact on the poor and non-poor; and

(g) the bail setting process is often characterized by mechanical and perfunctory decision making with inadequate attention to and understanding of recommendations for pretrial parole. Reasons for the denial of pretrial parole are rarely stated on the record and effective appellate review is virtually impossible.

Vera recommends that the Appellate Division, First and Second Departments, urge that:

(1) increased reliance be placed by the judiciary on the recommendations for pretrial parole of the Office of Probation's Release on Recognizance (ROR) Division.

(2) the reasons for a denial of pretrial parole in recommended cases should be set forth on the record to enable effective appellate review.

(3) a member of the ROR staff should be present at all arraignments to present information on the community roots of the defendant, to respond to questions from the bench on the ROR recommendation, to receive judicial requests for further investigation into the background of the defendant, and to assist in the formulation of conditions of release (see recommendation (10)).

(4) an agency be created which is responsible for analyzing the data generated by the judicial process and for regularly sending summaries of its findings to members of the judiciary. In the area of pretrial release, analyses should be prepared of rates of non-appearance, criminal activity during release, ability of defendants to post bail when pretrial parole is denied, etc.

B. Increasing the Percentage of Cases in Which an Office of Probation ROR Interview or a Police Department Summons Interview Is Conducted.

Based on findings that:

(h) 25 percent of the defendants in fingerprintable cases in Manhattan are never interviewed for ROR because they expect to be represented by private counsel or fall within another category of exclusion;

(i) such exclusions unfairly deprive a defendant of the possibility of having a verified objective background report at arraignment; and

(j) many non-fingerprintable defendants, some of whom are eligible for an ROR interview, are remanded to detention after arraignment having had neither an ROR interview nor a police summons investigation.

Vera recommends that:

(5) defendants in all fingerprintable cases be made eligible for ROR pre-arraignment investigations;

(6) the Police Department conduct a summons investigation in all non-fingerprintable cases (at first on an experimental basis in one precinct), except for offenses which virtually never result in pretrial detention, such as disorderly conduct.

The police summons investigation form should be amended to cover all questions presently asked during an Office of Probation ROR interview, including those pertinent to eligibility for Legal Aid. In cases in which a defendant is not actually summonsed, the form would be sent to court for use at arraignment, and, in appropriate remanded cases, as a basis for continued attempts at verification. (see recommendation (8)).

(7) all defendants who are remanded after arraignment to the custody of the Department of Correction who have not been interviewed for a police summons or an Office of Probation ROR recommendation should be interviewed by the ROR Division before they are transferred to a detention institution. Such interviews would then be incorporated into the process of post-arraignment verification and bail reevaluation outlined in recommendation (8).

C. Increasing the Percentage of ROR Cases in which a Pretrial Parole Recommendation is Made

Based on findings that:

(k) the Office of Probation recommends for pretrial parole only 39 percent of the Manhattan cases which it investigates for release on recognizance;

(l) over half of the non-recommended defendants have, on the basis of unverified interviews, sufficient community roots to qualify for a recommendation;

(m) the principal reasons for the failure to complete verifications are the inability to reach a defendant's references prior to arraignment, the fact that many references do not have phones, and the inability of a defendant to furnish the names of references; and

(n) more verifications would be completed if additional time were available to re-telephone previously unreachable references and to use street-address telephone directories to make contact with and postcards to induce telephone calls from references who do not have their own phones.

Vera recommends that:

(8) the ROR Division carry the process of verification of both ROR and police summons interviews into the post-arraignment period and submit applications for review of bail conditions on behalf of those defendants whose community ties are verified after they have been remanded to detention. Such applications for bail reevaluation should be made

in the ordinary sessions of the motion part of Supreme Court. Parties to such hearings should include representatives of the ROR Division, the Legal Aid Society, and District Attorney's Office. The presence of the defendant should not be required.

D. Creation of New Forms of Conditional Release

Based on findings that:

(o) many defendants can neither post bail nor qualify for a pretrial parole recommendation under existing requirements (primarily because they lack sufficient community ties or are unable to furnish the names of references);

(p) 57 percent of the defendants who are recommended for pretrial parole by the Office of Probation are denied pretrial parole at arraignment and many are then unable to post bail;

(q) informal third-party supervision of released defendants may offer a satisfactory substitute for money bail in appropriate cases; and

(r) Congress has authorized specially tailored, non-financial conditions of release in the federal court system for defendants who are unable to obtain release on money bail or personal recognizance.

Vera recommends that:

(9) the Office of Probation, in cooperation with the Human Resources Administration and other relevant agencies, compile a current list of persons and organizations willing to undertake informal supervision of released defendants.

(10) the burden of drafting proposed conditional release orders for submission to the court be placed upon defense counsel who would be assisted in selecting and contacting potential supervisors for specific cases by the Office of Probation.

(11) the Mayor propose legislation, modeled after the Federal Bail Reform Act of 1966, which would authorize new, non-financial conditions of release, such as formally placing the defendant in the custody of a designated person or organization; restricting his travel, association, or place of abode; and permitting daytime release.

E. Facilitating the Posting of Bail

Based on findings that:

(s) detained prisoners who are permitted to make unlimited phone calls from a house of detention and to speak personally with friends and family are twice as likely to raise bail as prisoners who are not permitted to do so;

Vera recommends that:

(12) prisoners in detention be given unlimited direct access to a telephone to facilitate the raising of bail.

F. Advance Plea Bargaining

Based on findings that:

(t) plea bargaining presently takes place in hurried conferences before the bench after a case has been called, wasting court time and often producing undue pressure on the defendant to "take a plea";

(u) a procedure enabling advance agreement between prosecutor and defense counsel on plea and sentence was successful in producing swift dispositions in a large number of cases during a recent seven-week experiment in Brooklyn Criminal Court; and

(v) agreements on disposition negotiated by prosecution and defense are more likely to be accepted by a judge if they are accompanied by a supporting social history of the defendant,

Vera recommends that:

(13) advance plea bargaining sessions be regularly scheduled so that prosecution and defense counsel may work out agreements on plea and sentence. Such agreements should be supported by concise, relevant social histories of the defendant.

G. Decreasing the Length of Time Between Conviction and Sentencing

Based on findings that:

(w) in detention cases, pre-sentence investigations which are limited to obtaining updated criminal records of the defendant can be produced within one week;

(x) adjournments for this process of "record and sentence" average approximately thirteen days in the Bronx; and

(y) defendants in such cases are spending an unnecessary week in detention if they are not subsequently sentenced to serve a prison term;

Vera recommends that:

(14) the Appellate Division, First and Second Departments, amend Rule 11 of the Criminal Court Act to limit adjournments for "record and sentence" in these cases to one week. A draft of such a rule change is contained herein at page 66 .

H. Protecting the Constitutional Right to a Speedy Trial

Based on findings that:

(z) the constitutional right to a speedy trial is not adequately protected in New York;

(aa) other jurisdictions have adopted legislation which places absolute limits on the length of pretrial detention and on the interval between arrest or arraignment and trial;

(bb) both the American Bar Association and the President's Crime Commission have endorsed such absolute limits; and

(cc) there are over 600 persons awaiting action in the Supreme Court who have already spent over six months in detention;

Vera recommends that:

(15) the Mayor propose legislation which would place absolute limits on the length of pretrial detention and on the interval between arrest or arraignment and trial. An outline of such legislation is contained herein at page 69.

I. Crash Programs for Reducing Overcrowding

Based on findings that:

(dd) overcrowding in detention institutions has reached a critical point at the present time;

(ee) the system should be equipped to deal with crisis situations which may occur in the future;

(ff) the crash plea bargaining and sentencing program recently undertaken in the Brooklyn Criminal Court was an effective measure for dealing with the extreme conditions existing there; and

(gg) the Manhattan Bail Reevaluation Project, and the pilot test of rapid bail reevaluation conducted by Vera during the course of the present investigation indicated that an emergency reevaluation procedure would be a useful part of a crash program;

Vera recommends that:

(16) the Administrative Judge of the Criminal Court, the District Attorney of each County, and the Legal Aid Society devise plans providing for the rapid convening of a special, or "block-buster", part of the court in each borough for the review of detention cases, at times of extreme overcrowding, in which efforts would be made to dispose of as many cases as possible through plea and sentence negotiations;

(17) a standby force under the supervision of Office of Probation and Department of Correction be created and trained to conduct bail reevaluation investigations of detainees on a crash basis, and resultant recommendations for release on recognizance or reduced bail be presented in the "blockbuster" part, in order to increase the likelihood that defendants whose cases are not disposed of by guilty plea or dismissed will be released on bail or recognizance.

I. The Detention Overcrowding Problem

A. The Magnitude of the Overcrowding Problem

During the first eleven months of 1968 there was a daily average of 5,720 males in detention, an increase of 27.2 percent over the average daily census of 4,497 for 1967. On an average day in November 1968 there were 6,594 males in detention, an increase of 2,085 over the average of 4,509 for January 1968. On the average, the monthly increase of male prisoners was 209, over eleven times the average during the previous three years. The accelerated rate of increase for 1968 can be seen from the following table.

Table 1

Average Daily Male Detention Population by Month and Monthly Changes; January 1965 and January - November, 1968.

Month	Average Daily Census	Monthly Change
(Jan. 1965)	3854	-
Jan.	4509	18 (avg.)
Feb.	4941	432
Mar.	4981	40
Apr.	5061	80
May	5124	63
June	5421	297
July	5848	427
Aug.	6484	636
Sept.	7012	528
Oct.	6859	-153
Nov.	6594	-265
	Total Increase	2,085
	Average Monthly Increase	209

Source: Department of Correction.[1]

1. Statistics furnished by the Department of Correction come from two basic sources: first, the tables prepared by the Records and Statistics Division, Analysis Unit, on September 16, 1968 for distribution to the Mayor's Criminal Justice Coordinating Council; (some of these tables have been brought up to the end of November with the aid of the Records and Statistics Division); second, the weekly Inmate Analysis Sheets prepared by the Records and Statistics Division.

B. The Detention Population and the Courts

The increase in the detention population is equally divided between persons awaiting trial or pre-trial action in Criminal and Supreme Courts.

Table 2

Average Number of Males Awaiting Trial or Pre-Trial Action for Selected Months in 1968.

Month	Criminal Court			Supreme Court		
	Awaiting Examination	Awaiting Trial	Total	Awaiting Indictment	Awaiting Trial	Total
Jan.	1,143	401	1,544	485	887	1,372
July	1,829	546	2,375	802	1,093	1,895
Nov.	2,000	521	2,571	904	1,443	2,347

Source: Department of Correction

As can be seen from Table 2, the number of persons awaiting trial or pre-trial action in Criminal Court increased by 1,027 during the period from January 1968 to November 1968 -- an increase of 67 percent. The corresponding figure for Supreme Court is an increase of 975 persons or 71 percent. While the rate of increase for Criminal Court has somewhat subsided since July, the rate of increase for Supreme Court has continued to soar.

A jurisdictional breakdown of the detention population reveals that most of the backlog is concentrated in New York and Kings Counties.

Table 3

Number of Males Awaiting Trial or Pre-Trial Action for One Day in November, 1968 by County of Jurisdiction.

	Criminal Court			Supreme Court		
County	Awaiting Examination	Awaiting Trial	Total	Awaiting Indictment	Awaiting Trial	Total
Bronx	301	63	364	81	312	393
Kings	754	97	851	237	544	781
New York	713	290	1,003	518	425	943
Queens	265	17	282	106	138	244
Richmond	6	3	9	5	12	17
TOTAL	2,039	470	2,509	947	1,431	2,378

Source: Department of Correction Inmate Analysis Sheet for November 29, 1968.

C. Causes of the Overcrowding

The cause of the increased population in 1968 has been the continuing increase in the length of pre-trial detention coupled with a

marked change in the trend of admissions to detention institutions. (See Table 4 below). In both 1966 and 1967 the average length of custody increased over the previous year. However, in both of those years, the average monthly number of admissions declined over the previous year. The downward trend in admissions muted the effect of the increasing length of detention and prevented the population from increasing proportionately with the length of stay.

In 1968, on the other hand, the average monthly number of admissions ceased to decline. Male admissions for the first seven months of 1968 were almost 1,000 greater than admissions for the first seven months of 1967, and the average monthly number of admissions for the first seven months of 1968 was 6.4 percent higher than the average monthly number of admissions for all of 1967.

Table 4

Average Monthly Admission of Males to Detention Institutions, Average Length of Stay, and Changes from Year to Year, 1965-1968 (first 7 months)

YEAR	(1) Avg. No. of Admissions per month	(2) Avg. Length of Stay in Days	(3) Change in Avg. No. of Admiss. over Prev. Year	(4) Percent Change in No. of Admiss.	(5) Change in Avg. Length of Stay over Prev. Yr.	(6) Percent Change in Avg. Length of Stay	(7) Additive Total Percent Change (4)+(6)
1965	6,705	18.5					
1966	5,829	22.2	-876	-13.1%	+3.7	+20.0%	+6.9%
1967	5,264	26.5	-565	- 9.7%	+4.3	+19.4%	+9.7%
1968 (first 7 months)	5,600	28.4	+336	+ 6.4%	+1.9	+ 7.2%	+13.6%

Using the final column from Table 4 which combines the effects of changes in the number of admissions and the length of custody over the course of a year, one can make a statistical prediction of how the detention population should have increased over the previous year. This prediction may then be compared with the actual increase in the detention population for the period in question.

Table 5

Comparison of Actual Average Daily Male Population for Year with Predictions of Samed Based on Changes in the Number of Admissions and the Length of Stay, 1965-1968 (first 7 Mos.)

YEAR	Actual Average Daily Census For Yr.	Combined Percent Increase in Admiss. and length of Stay	Predictive Average Daily Census for Year
1965	4,007		
		6.9%	
1966	4,173		4,283
		9.7%	
1967	4.497		4,578
		13.6%	
1968 (first 7 mos.)	5,122		5,109

As can be seen from Table 5, if one increases the average daily census for a given period (column 1) by the combined percentage increase in admissions and length of stay during the succeeding period (column 2), one arrives at a very close approximation of the average daily census for the succeeding period (column 3) compared with column 1.

Tables 4 and 5 include data up through July 1968. A figure on the average length of stay as of November 1968 is not available. However, it can be derived by a reversal of the process of computation used in Table 5, and the assumption, validated by that table, that increases in the detention population are a composite of increases in the average number of monthly admissions and the average length of stay. Table 6 shows that the average length of custody is now in excess of 30 days.

Table 6

Derivation of the Current Average Length of Custody

(1)	Average Daily Census 1967	4,497
(2)	Average Daily Census 1968 (11 months)	5,720
(3)	Percentage Increase	27.2%
(4)	Average Monthly Admissions 1967	5,264
(5)	Average Monthly Admissions 1968 (11 months)	5,982
(6)	Percentage Increase	13.6%
(7)	Percentage Increase in Length of Stay from 1967-1968 [(3) minus (6)]	13.6%
(8)	Average Length of Stay 1967	26.5 days
(9)	Average Length of Stay 1968 [113.6x26.5]	30.1 days

In short, the 1968 increase in the detention population is attributable to parallel increases of over 13 percent in the average length of stay and the average monthly number of admissions.

Some of the forces producing the increase in admissions are clear. During the first nine months of 1968, police arrests rose by 18.5 percent over the corresponding period for 1967.[2] The average monthly number of police cases entering the court system during the first eleven months of 1968 was 13.7 percent greater than the average monthly number for 1967.[3] The average monthly number of police cases remanded to the Department of Correction after arraignment has increased by a comparable 14.5 percent.[4]

2. Crime and Related Activity -- Arrests, Statistical Report, New York Police Dept., Crime Analysis Unit, Sept. 1968, p.3. The changes by crime classifications were: felonies - 0.4 percent; misdemeanors +36.4 percent; and violations +53.8 percent.

3. Department of Correction figures show a monthly average of 10,149 police cases in 1967 and 11,537 for the first eleven months of 1968.

4. Department of Correction figures show a monthly average of 4,850 remanded cases in 1967 and 5,554 for the first eleven months of 1968.

While the number of cases remanded after arraignment has increased significantly, the percentage of cases remanded has only increased by .3 percent.[5] At first glance one would conclude that increased judicial severity at arraignment is probably not a causative factor in the rise in admissions to detention. However, the path to such a conclusion has one detour. Admissions to detention were increasing at a time when felony arrests were virtually constant and misdemeanor and violations arrests were increasing.[6] Thus there are two possible explanations for the increase in admissions. The first is that bail setting practices have remained unchanged and the increase is concentrated among non-felony defendants. The second is that bail conditions have become more onerous in felony cases and less onerous in non-felony and the increase includes many felony defendants. While statistics on admissions to detention by general crime classification (e.g. felonies, misdemeanors, etc.) are not available, there is no evidence to

5. The percentage of total police cases remanded to custody was 47.8 percent in 1967 and has been 48.1 percent through the end of November, 1968.

6. See note 2, supra p. 21.

suggest a general rise in the amount of bail set in felony cases or a decline in the ability of felony defendants to post bail. One must, therefore, conclude that that portion of the increased detention population which is attributable to an increase in admissions to detention consists of defendants in non-felony cases.

As for the increase in the average length of custody -- already shown to be responsible for half of the rise in the detention population -- causative factors cannot be easily quantified. There are a host of reasons set forth later in this report (p.59-61) as to why the length of time between arraignment and final disposition is increasing.

The remainder of this report will explore ways in which the number of persons in detention and the length of detention might be reduced or prevented from increasing further.

II. Alleviating the Overcrowding in Detention Institutions

A. Decreasing the Number of Pretrial Detainees

Pretrial detention has harmful consequences far beyond the overcrowding of detention institutions. It removes heads of households from their homes and costs them their jobs. Deprivation of personal liberty impairs preparation for trial and substantially increases the likelihood of conviction and the severity of sentence.[7]

1. Expanded Use of Pretrial Parole

The most common form of pretrial release is parole or release on recognizance. Of 26,152 defendants who were scheduled to make an appearance in a calendar part of Manhattan Criminal Court from January to March of 1967, 19,026 or 72.8 percent obtained some form of pretrial release between the time of arraignment and final disposition of their case.[8] In cases in which the form of pretrial release could be ascertained, parole had been

7. See, Wald and Rankin, Pretrial Detention and Ultimate Freedom: A Statistical Study, 39 N.Y.U.L.Rev. 631 (1964). Pretrial detention was not merely associated with, but rather, was causally connected to unfavorable disposition. The 47 percent greater likelihood of receiving a prison sentence if pretrial freedom was never secured could not be explained away by differences in the backgrounds of defendants who were detained as compared with those who posted bail.

8. It should be carefully underscored that the cases in the study were not cases which necessarily arose or terminated in the January to March period. The basis of inclusion was a scheduled post-arraignment appearance during that period.

granted in 11,151 or 58.9 percent of the cases.[9] While it is impossible to determine how many of the paroled defendants would have been able to raise money bail, parole undoubtedly enabled the release of substantial numbers of persons who would otherwise have remained in jail.

(a) Increasing Reliance by Judges on Recommendations for Pretrial Parole by the Office of Probation

The number of persons who are paroled before trial can and should be increased. The increase, however, must be selective, keyed to the probability that the defendant will appear in court when required. Criteria for assessing a defendant's reliability, based on his ties to the community, were developed by the Manhattan Bail Project and are currently used by the Office of Probation's Release on Recognizance (ROR) Division. These criteria represent the best predictive tool currently at the disposal of judicial process. As can be seen from the following table, released defendants who were recommended for pretrial parole by

9. Of the 19,206 cases, the condition of release could not be determined in 102, leaving a net of 18,924.

the Office of Probation had a lower rate of non-appearance (3.5%) than those investigated and not recommended (6.7%) and a lower rate than those not investigated at all (6.5%). This was true not only when the recommended persons were released on pre-trial parole, but even when they were denied pre-trial parole and secured release by posting a bond or cash bail.

Table 7

Rates of Non-Appearance for Defendants -- by Condition of Release and ROR Rating of the Office of Probation

Rating of Office of Probation	Condition of Release			
	Parole	Bond	Cash Bail	All
Recommended for ROR	3.1	1.3	5.8	3.5
Not Rec. for ROR	8.2	1.4	8.5	6.7
Not Investigated for ROR	6.2	2.1	11.0	6.5
All	5.9	1.9	10.2	6.1

Source: Vera Institute of Justice Bail Jumping Study[10]

10. The Vera Institute of Justice Bail Jumping Study is based on the 19,026 defendants scheduled to make an appearance in Manhattan Criminal Court between January 1 and March 31, 1967. All cases were followed through to final disposition. The rates of non-appearance in this table would differ from bail jumping statistics compiled by a District Attorney's Office. The latter are usually based on the number of bench warrants issued rather than the number of defendants who fail to appear. A bench warrant is issued for each unanswered docket number on the court calendar and defendants are often given several docket numbers for multiple charges arising out of the same circumstances. Furthermore, a DA's statistics are not corrected for defendants who miss a scheduled appearance and then return voluntarily to court. A separate report on the Vera Bail Jumping Study with a greater elaboration of statistics and methodology is in preparation.

The "jump" rate for persons recommended for pretrial parole by the Office of Probation and who were in fact released on parole was 3.1 percent. This rate of non-appearance was half that of persons released on parole who were not investigated for ROR and less than two-fifths the rate of those who were investigated and not recommended (either because of insufficient ties to the community or incomplete verification of their interview responses).

The fact that 96.9 percent of those released on parole in conjunction with a recommendation from the Office of Probation return to court voluntarily and the importance of parole in enabling the indigent to obtain pretrial freedom suggest both the logic and the desirability of following such recommendations. Yet at the present time in Manhattan, pretrial parole is granted in only 43 percent of the cases in which it is recommended.

Table 8

Percentage of Cases Paroled and Not Paroled According to ROR Rating and Type of Offense, Manhattan ROR Office, January-September, 1968

	Paroled	%	Not Paroled	%	Total	
Recommended						
Fingerprintable[11]	3,181	37.2	5,373	62.8	8,554	100.0
Non-fingerprintable	1,403	66.1	718	33.9	2,121	100.0
Total	4,584	42.9	6,091	57.1	10,675	100.0
Not Recommended						
Fingerprintable	2,474	16.6	12,432	83.4	14,906	100.0
Non-fingerprintable	459	23.3	1,514	76.7	1,973	100.0
Total	2,993	17.4	13,946	82.6	16,879	100.0

Source: Office of Probation

The above table shows that a defendant recommended for pre-trial parole stands a two to threefold greater chance of being released without bail than one who is investigated by ROR and not recommended. These figures do suggest that judges are being influenced in the granting of pre-trial parole by favorable recommendations. However, the key question is whether greater reliance should be placed on them.

11. Fingerprintable cases are all felonies, misdemeanors listed in Section 552 of the Code of Criminal Procedure, and certain offenses such as gambling and prostitution.

At the present time, the nature of the offense charged (which plays no role in the ROR recommendation) and the defendant's previous criminal record (which does play such a role) seem to be the major counter-vailing influences to the favorable recommendation. Of course, one cannot be sure of a judge's reasons for rejecting a recommendation for pretrial parole because they are rarely stated explicitly. Neither of the aforementioned factors, however, is demonstrably related to the question of whether the defendant will return to court for trial -- the primary question in the bail setting process. Instead, they are used to make an implicit determination that the defendant is dangerous to the community and, therefore, his release is made more difficult by the imposition of money bail.

This process may be criticized in several respects. First, the existing Code of Criminal Procedure does not authorize preventive detention.[12]

12. Compare Sec. 275.30 (2)(b) of the Proposed New York Criminal Procedure Law, Temporary Commission on Revision of the Penal Law and Criminal Code, 1968 Study Bill, Sept. 1968, hereinafter cited as "proposed CPL." Under the proposed CPL the judge who sets bail in cases where bail or recognizance is discretionary must take into account "the likelihood that (the defendant) would be a danger to society or to himself if at liberty during the pendency of the action or proceeding."

Second, even if preventive detention were authorized for dangerous defendants, there are no existing standards by which determinations of dangerousness can be made.[13] The implicit judgments now formulated not only lack validated bases, but totally escape judicial review as well.[14] Third, even if dangerous defendants could be identified, the mechanism for achieving preventive detention should not be high money bail. The latter would merely lead to detention for the dangerous-and-poor and release for the dangerous-and-not-so-poor.

A defendant released after making bail is neither more nor less dangerous than a defendant released on pretrial parole or other non-financial conditions. If a judge is willing to allow a defendant to obtain his freedom before trial, the condition of release should be effectively within the defendant's reach. In cases of persons recommended for pretrial parole, the condition of release should presumptively be parole, since such recommended persons have verified

13. Under the proposed CPL the determination of dangerousness is to be made on the basis of the defendant's character, reputation, habits, mental condition, previous criminal record (both convictions and charges), and the charge or charges in the pending case. §275.30 (2)(b). Unfortunately, no study has ever been made of the relative importance of these factors in predicting dangerousness. Even if all of the listed categories of information are before a judge at the time bail is set, he has no guidelines for evaluating them.

14. "The present invisibility of the issue of dangerousness, by preventing judicial review of specific cases, undoubtedly impedes the development of standards and data concerning dangerousness." The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts (1967) p. 40.

community roots and, with reasonable certainty, will appear for trial when required. If such a recommendation for pretrial parole is opposed by the Assistant District Attorney (ADA), he should be required by the judge to state his reasons. Furthermore, if the judge declines to follow the ROR parole recommendation, his reasons should be set forth on the record. Such a procedure would enable judicial review of denials of parole, thus bringing under appellate scrutiny subjective fears of flight by the defendant and hidden assumptions of his dangerousness.

In order to assure that recommendations for pretrial parole are adequately brought to the attention of the court, it is recommended that an ROR representative be present at all arraignments. Such a representative, familiar with the ROR investigatory process, would effectively compliment the hand-written ROR report. He would be able to respond to questions from the bench on the ROR recommendation and receive judicial requests for further investigation into the background of the defendant. In addition, as discussed below, he would assist defense counsel and judge in

the formulation of special non-financial conditions of release and also play a vital role in the proposed post-arraignment verification and bail review processes.

Appellate review of denials of pretrial parole and greater participation by ROR representatives will not, by themselves, rationalize the bail setting process. Statistics on and analysis of rates of non-appearance, criminal activity during pretrial release, and the ability of defendants to post bail when parole is denied must be regularly supplied to the judiciary. At the present time no agency is responsible for producing such information. Vera recommends that an agency be created which is charged with the broad responsibility of analyzing, summarizing, and reporting, on a regular basis, the data generated by the entire judicial process.

(b) Increasing the Percentage of Cases in which an Office of Probation ROR Interview or a Police Department Summons is Conducted.

ROR coverage in Manhattan arraignment cases is set forth below:

Table 9

Percentage of Arrest Cases Investigated for ROR Eligibility by Manhattan ROR Office by Type of Offense, January-September, 1968.

	Total Cases[15]	ROR Investigations	%	Cases not Investigated for ROR	%
Fingerprintable	31,547	23,460	74.4	8,087	25.6
Non-fingerprintable	22,434	4,094	18.2	18,340	81.8
Total	53,981	27,554	51.0	26,427	49.0

Source: Office of Probation

(1) Fingerprintable Cases

Interviews are conducted in three-fourths of the fingerprintable cases. Of the remaining one-quarter, half are excluded because the defendant expects to be represented by private counsel and the other half because the case is a homicide, an assault in which the victim is in critical condition, a prostitution or gambling offense; or because the defendant has an outstanding bench warrant.[16]

While the 75 percent coverage is high, some of the exclusions may be questioned. For example, are defendants who expect to hire private counsel excluded

15. The figure for "total cases" is the number of Legal Aid Eligibility investigations conducted by the Office of Probation. It is assumed that such an investigation is conducted in every case.

16. Of the 8,087 non-investigated fingerprintable cases, 3,801 expected to be represented by private attorneys and 4,286 were excluded for one of the other reasons listed in the text. Defendants who are non-residents of New York City or members of the armed forces are interviewed but not formally recommended. The interview is submitted to judge under the caption "for information only."

because it is thought that they can also afford to post money bail? Even if this assumption were valid the exclusion is unfair. Denied the possibility of a favorable recommendation from the Office of Probation, such defendants lose the advantage of a verified background report from an impartial source. Even if they are able to post bail, they must pay a bondsman's fee or tie up funds by posting cash bail, two percent of which is not returned. If unable to post bail at arraignment, they must undergo admission to detention while awaiting its receipt. The exclusion for gambling offenses is subject to similar objections. Even in cases in which the likelihood of pretrial parole is remote, investigations should be conducted in the interests of providing the judge at arraignment with the fullest possible information about the defendant. Such information enables rational decision making in all cases, not simply those in which pretrial parole is recommended. For these reasons Vera recommends the abolition of all exclusions in fingerprintable cases.

(2) Non-fingerprintable Cases

There are two existing procedures which are designed to divert a non-fingerprintable defendant with community roots from pretrial detention. The first is the Police Summons Program and the second is the Office of Probation ROR Program.

During the first nine months of 1968, there were 41,813 summonsable arrests in New York City. A summons investigation was conducted in 16,909 cases or 40.4 percent of the total. In the remaining

cases the desk officer at the stationhouse waived the investigation or the defendant refused to be interviewed for summons purposes. Of those investigated, 15,002 defendants (88.7 percent) were issued summonses and released. All persons not actually summonsed (26,811) were taken to court for arraignment. It is within this category of defendant that the ROR Division conducts its non-printable interviews.

As was shown in Table 9, ROR interviews are conducted in only 18.2 percent of the non-printable cases in Manhattan. This has been attributed to the preference given to fingerprintable cases when the workload is heavy and the limitation of interviews to city residents charged with fourteen specific crimes.[17] Data are not available on the percentage of eligible non-printables which receives an interview.

The theory which underlies the low preference given to and the limited coverage of non-printables is that many of the defendants in less serious cases will be paroled without a recommendation, will post bail, or will have the case disposed of at arraignment. This theory may not be valid. Although data are not available on the rates at which non-printable defendants are remanded to

17. These crimes are: petty larceny, shoplifting, assault, forgery, menacing, driving impaired, resisting arrest, criminal trespass, reckless endagerment, false alarm, glue sniffing, reckless driving, criminal mischief, and interfering with arrest.

detention, it has been shown above (p.23) that non-felony defendants[18] account for the bulk of the rise in admissions to detention. One may assume that significant numbers of these defendants are charged with non-printable offenses such as petty larceny, assault, etc. and have been granted neither a summons nor an ROR interview.

Therefore, Vera recommends that a two-tiered procedure for screening non-printable defendants be adopted. First, the Police Department (initially as an experiment in one precinct) should conduct a summons interview in all non-printable cases, with the exception of offenses which virtually never result in pretrial dentention (e.g. disorderly conduct). The police summons investigation form should be amended to include the same questions as the ROR interview sheet, including those pertinent to Legal Aid eligibility.[19] In cases in which the defendant is not actually summonsed, the form would be forwarded to court for use at arraignment, and, in appropriate remanded cases, as a guide for continued attempts at verification (see p.47 below). Such a procedure would eliminate the need for Office of Probation interviews in all non-printable cases except

18. The term "non-felony defendant" is not synonymous with the term "non-fingerprintable defendant." Misdemeanors listed in §552 of the Code of Criminal Procedure and certain offenses such as gambling and prostitution are fingerprintable as are all felonies. All other misdemeanors and offenses are non-printable. For a partial listing, see note 17 supra.

19. For a further discussion of Legal Aid eligibility interviews see p. 42 infra.

those in which the defendant refuses to be interviewed by the police for summons purposes. Thus, the ROR Division could concentrate on interviewing fingerprintable defendants and on completing verifications both of its own cases and those unfinished by the police.

The second phase of the system would consist of post-arraignment interviews for all remanded defendants who had not previously been interviewed by the police or the Office of Probation. If in the long run the ROR Division interviews all printables and the Police Department most non-printables, there might only be a small need for this back-up system. However, it should be available for intentionally excluded cases which are remanded to pretrial detention in defiance of probability(e.g. disorderly conduct) or cases inadvertently left uninterviewed. Implementation of this procedure should not await the proposed expansion of police summons coverage. There is an immediate need for diverting appropriate non-printable cases from pretrial detention and this need should be met by a post-arraignment interview system combined with the post-arraignment verification and bail review processes outlined below (p.47).

In Manhattan, defendants could be interviewed in the pens behind the court room or they could be taken up to the third floor ROR room. The former might be preferable in terms of avoiding an additional check-out and check-in by the Department of Correction and avoiding a problem of providing escorts back to the ROR room.

(c) Increasing the Percentage of Investigated Cases in Which a Recommendation for Pre-trial Parole Is Made

The percentage of investigated cases in which recommendations for pre-trial parole are made is set forth below in Table 10.

Table 10

Percentage of ROR Investigations in Which Pretrial Parole was Recommended, Manhattan ROR Office, January - September 1968.

	ROR Investigation	ROR Recommendation	%	No ROR Recommend.	%
Fingerprintable	23,460	8,554	36.5	14,906	63.5
Non-fingerprintable	4,094	2,121	51.8	1,973	48.2
Total	27,554	10,675	38.7	16,897	61.3

Source: Office of Probation

Unfortunately one cannot evaluate the 38.7 percent rate of recommendation without knowing the reasons why cases are not recommended and statistics of this kind are not kept by the Office of Probation. To overcome this difficulty, a sample of interview sheets for non-recommended defendants was analyzed.

Table 11

Reasons for a Non-Recommendation in 1,634 Cases Investigated by the Manhattan ROR Office in September, 1968.

Reason	Number	%
1. Insufficient Points on Rating Scale	722	44.2
2. Sufficient Points but Incomplete Verification Because	912	55.8
		100.0
(a) Reference could not be reached	328	36.0
(b) Reference has no phone	123	13.5
(c) Defendant unable to furnish reference with a phone	201	22.0
(d) Reference could not verify	57	6.3
(e) Other	203	22.2
	912	100.0

These data are startling in several respects. A majority of the defendants in non-recommended cases have, on the basis of unverified information, sufficient ties to the community to qualify for a favorable ROR recommendation. The three major reasons given by the ROR investigators for non-completion of verification, although overlapping, suggest that verifications are not complete because (1) many references are not at home at the time the ROR staff tries to reach them. During the day, members of the defendant's family may be at work and during the evening, employment references are not at work; (2) many references do not have phones; and (3) many defendants who score sufficient points on the basis of steady employment, minimal prior record, and permanent address are unable to furnish references because they live alone and fear giving an

employment reference. In few cases do the investigators find references contradicting the information given by the defendant in the ROR interview.

Because of the limited time available to the ROR staff to conduct its investigations in the pre-arraignment period, second attempts are rarely made to contact a reference who could not be reached with the initial phone call. Nor are street-address telephone directories used as extensively as they might be to locate residents in the defendant's building who might verify information or bring members of the defendant's family to the phone. In short, the percentage of investigated cases which leads to positive recommendations for pretrial parole would increase if more time were available in which to verify facts elicited during ROR interviews. More time can be made available in both the pre and post arraignment periods.

(1) Increasing the Time Available For Verification in the Pre-Arraignment Period.

The time available for verification will increase upon implementation of a proposal, now under consideration, to establish pre-arraignment processing centers throughout the city.[20] The primary purpose of these facilities is to obviate

20. The first of these centers is tentatively scheduled to begin operation in the Bronx in early 1969. Additional centers are to be opened every two months thereafter.

the necessity of civilian complainants and arresting officers having to travel to remote boroughs when courts are not open in the borough of arrest. For the night and weekend court cases passing through the facility,[21] the ROR interview will take place about an hour earlier in the time period between arrest and arraignment than at present. ROR investigators at the pre-arraignment center will be able to continue the process of verification during the time in which the defendant is being transported to court, and in fingerprintable cases, while the defendant is being fingerprinted and photographed as well.[22] Verified facts can be telephoned to ROR investigators in the court building who will update the interview sheet. In fingerprintable cases the task of up-dating will be routine because ROR investigators at the Police Identification Unit will, in all cases, have to fill in the data on the defendant's previous criminal record. Where verification is not completed before the non-fingerprintable defendant leaves the pre-arraignment center, the case will be flagged. The police officer escorting

21. Cases to be arraigned in day court will follow existing pre-arraignment procedures.

22. In March, 1969 the Police Identification Unit will be transferred from Police Headquarters at 240 Center Street to the first floor of the Criminal Courts building at 100 Centre Street.

the defendant after arrival at the court building will then stop off at the ROR investigation room where the additional information received by telephone may be added to the interview sheet.[23]

It has been argued that the ROR Division would be able to complete a larger number of investigations if it were relieved of the responsibility for conducting the Legal Aid eligibility investigation. The Legal Aid Society prefers to have an agency other than itself conduct the investigation to avoid criticism from private attorneys that Legal Aid is handling defendants who are able to afford private counsel. While such criticism could equally well be avoided by allowing a representative of the Bar Association to inspect eligibility reports, Vera would, nevertheless, recommend that the ROR Division retain this function for the following reasons:

First, the ROR Division must gather virtually identical data in cases investigated for ROR eligibility. A second interview by Legal Aid would amount to wasteful duplication in 50 percent of all cases (in Manhattan) (see Table 9, p. 33). To the extent that ROR coverage increases under recommendations made in this report, the percentage of duplication would similarly increase.

23. The transfer of the Police Identification Unit to 100 Centre Street will allow greater coordination and flexibility between the two halves of the 4 p.m. - 12 p.m. ROR shift, since both will then be located in the same building.

Second, interviews limited to determining Legal Aid eligibility take about two minutes to complete. No attempts are made to verify a defendant's means of support or his lack of assets. In most cases, eligibility is clear and in the few marginal cases the difficulties of verification would make the attempt of doubtful utility. In any event, if police summons investigations are conducted in all non-fingerprintable cases and the questions relevant to Legal Aid eligibility added to the summons interview (see p. 36 above), the burden on the Office of Probation would be sharply reduced.

Third, and most important, if eligibility interviews were to be conducted by Legal Aid, one of two possible procedures, both inefficient, would have to be adopted. One would be the reinstitution of "second calls" at arraignment. When a case is called the defendant declares himself without counsel. He is then interviewed and his case called a second time. The alternative would be to station Legal Aid lawyers along side of ROR investigators (in ROR interviewing areas) and have them fill out the eligibility sheet for defendants not undergoing an ROR investigation. This procedure would amount to replacing ROR investigators with members of the bar -- a poor allocation of resources.

A final word on pre-arraignment investigations is in order. Even if no new programs were under consideration, more ROR investigations could be completed prior to arraignment. At the present time police officers, anxious to have their prisoners arraigned quickly, pressure the ROR investigators. Because of the importance of the ROR investigation such pressures must be resisted. At this stage of the criminal process, the interest of the defendant in enhancing his chances for pretrial parole must outweigh a ten minute saving of police time.

(2) Continuing Verification Into the Post-Arraignment Period and Bail Reevaluation.

Because of the large number of defendants who would apparently qualify for a positive ROR recommendation with further attempts at verification, Vera conducted a three day experiment in November 1968 to design a procedure by which bail could be reevalued for defendants whose community ties could be verified after arraignment. ROR interview sheets were screened to identify appropriate defendants, and arraignment calendars were checked to see if these defendants had been remanded to detention. Intensive efforts were made to complete verification in cases

in which adjournment dates did not conflict with the special Supreme Court bail review hearings established for the experiment. Of 108 cases investigated, positive recommendations were developed on behalf of 10 defendants. Of these, three were granted parole and one a reduction in bail.[24]

This experiment was not intended to secure the release of large numbers of defendants. The Manhattan Bail Reevaluation Project conducted by Vera (June 1966 -Aug.1967) had already demonstrated that a significant reduction in the detention population could be achieved through bail review. During that fourteen month period 653 defendants, 61 percent of the 1,070 persons recommended, secured post-arraignment release on reduced bail or recognizance. A statistical analysis of the program demonstrated a reduction of 73 persons in the average daily number of male felony defendants awaiting Supreme Court action in Manhattan.[25]

The three day experiment in November 1968 was intended to test the feasibility of engrafting bail reevaluation onto existing ROR procedures. Defendants were not reinterviewed

24. In all four cases in which a change in bail conditions was effected, the Assistant District Attorney agreed to the change. In the remaining six, the ADA opposed any change and the application was denied by the court.

25. See, Lenihan, "Measuring the Effect of a Bail Reform: The Manhattan Bail Reevaluation Project," on file at the Vera Institute of Justice. Although the Project included misdemeanor and female defendants, the statistical analysis was limited to male felony defendants because of the difficulties in obtaining accurate data on release rates in the other two categories.

as they had been during the Manhattan Bail Reevaluation Project. The only source of information-to-be-verified was the original ROR interview sheet, a document not prepared by the ROR staff with the expectation of re-use by other investigators. As a result several difficulties were experienced in trying to re-use the interview sheet such as illegible writing, incomplete point counts, cryptic abbreviations, and omitted items of information. In addition because of insufficient clerical help, the ROR staff had not recorded arraignment dispositions on the interview sheets, thus necessitating a time-consuming calendar search by Vera to identify appropriate cases for continued attempts at verification.

Nevertheless, the bail review procedure developed by Vera and outlined below (with appropriate modifications) could be appended to established procedures used by the Office of Probation, and would result in the release of an estimated additional 700 to 1,000 prisoners per year on a city-wide basis. This estimate is probably conservative in view of the fact that the Manhattan Bail Reevaluation Project secured the release of 653 defendants during a fourteen month period in Manhattan alone. The impact of such a program on the size of the detention population would depend

not simply on the number of persons released, but on the number of days each released prisoner would have spent in detention. Since the average length of detention now exceeds 30 days, the cumulative impact of releasing only one additional prisoner per day would lower the average daily detention population by 30 persons. Four releases would yield a 120 prisoner reduction. If a person released were charged with a felony which ultimately reaches the jurisidiction of the Supreme Court, his release after bail review (assuming he would not otherwise have been able to post bail), would save over 140 days of detention.[26] The daily release of one such defendant would lower the average daily detention population by 140 prisoners.

Outline of A Continuing Verification Procedure

1. Cases interviewed in the pre-arraignment period in which the defendant has sufficient points to qualify for a recommendation, but in which verification has not been completed because of an inability to contact a reference, would be stamped with the legend "Verification to be Continued." All post-arraignment interviews would be stamped in the same manner.

26. See Table 13, infra p. 68.

2. When a defendant with an incomplete verification is remanded to the custody of the Department of Correction after arraignment, an ROR representative stationed in the arraignment part or in the post-arraignment interview area would dispatch a copy of the defendant's police summons or ROR interview sheet to the other ROR investigators.

3. One or more ROR investigators would be charged with the responsibility of contacting references for remanded cases. At a minimum, night phone calls would be made on behalf of those originally interviewed during the day and daytime calls for those handled at night. To facilitate such an operation, the original interviewer would record, next to the name of the reference, the hours when the reference is likely to be at home or at work. If a reference could not be reached by phone during the 24 hours after arraignment, a postcard would be sent to the reference asking him to call a special telephone number set aside for incoming calls. An alphabetical file of such references, containing cross references to the case, would be kept by the in-call phone so that the staff man answering such calls would be able to ask the appropriate questions.

4. When verification is completed for a particular case, an application for bail review would be made at the next regular session of the motion part of Supreme Court.[27] The ROR representative would discuss each case prior to the hearing with the Legal Aid and District Attorney representatives who are normally assigned to that part. The presence of the defendant would not be required.

2. Creation of New Forms of Conditional Release

The bail reevaluation procedure outlined above would not end the unavailability of pretrial release without money bail for defendants who are unable to supply references, those who do not meet existing criteria for release on recognizance or those recommended for pretrial parole but denied it. To enable these defendants to obtain their freedom prior to trial, Vera would make two recommendations; first, the initiation of a program of releasing defendants in the informal custody of third parties; second, the adoption of legislation authorizing new and more complex non-financial conditions of release.

27. The recommendation that bail review applications be presented in Supreme Court rather than Criminal Court is based on findings of The Manhattan Bail Reevaluation Project that (a) Criminal Court judges are reluctant to alter the bail conditions set at arraignment by brother judges of the Criminal Court and (b) that the less hurried atmosphere of Supreme Court is more conducive to deliberation and allows for greater consultation on recommendations with the District Attorney. During the project Vera recommendations for changes in bail conditions were accepted in Criminal Court in only 27 percent of the cases. In Supreme Court, recommendations were accepted in 48 percent of the cases. Moreover, the higher rate in Supreme Court was among defendants who were within the jurisdiction of Supreme Court (hence, charged with more serious crimes) or defendants who had already been denied parole or reduced bail in a Criminal Court bail review application.

(a) Informal Third-Party Supervision of Released Defendants

During the course of the Manhattan Bail Reevaluation Project, Vera found more than fifty organizations in New York City -- including anti-poverty agencies, churches, labor unions, and settlement houses -- who were willing to supervise the pre-trial release of selected defendants.

A typical case was as follows: A nineteen year old youth was charged with receiving stolen property -- a pair of shoes having been found in his possession. The boy had recently come to New York from a southern state. He was employed on Long Island for his first few weeks. When arrested he was supporting himself as a shoeshine boy in the Port Authority Bus Terminal. Although the charge was a misdemeanor and the youth had no record, he was not released on his own recognizance. Instead, bail was set at $50, a nominal amount, but sufficient to result in detention for a person with no funds and no friends in the city. This defendant had not been recommended for ROR because he had no local references and had been living by himself in a hotel for transients. However, on review, Vera was able to recommend pretrial release by arranging, as a condition in lieu of bail, for a social worker from a poverty agency to keep in contact with the accused until his next court appearance. The court accepted this condition and the youth was released.

The responsibility for developing a current list of potential sponsors for released defendants should be assumed by the Office of Probation in cooperation with The Human Resources Administration and other agencies. In any specific case, where the defendant is denied parole at arraignment and cannot realistically be expected to post bail, the defense counsel (usually Legal Aid) should request release under the supervision of one of the sponsors suggested by the Office of Probation.

(b) Legislating New Non-Financial Conditions of Release

Informal supervision by volunteers would not be an acceptable condition of release in many cases. Legislation is required which creates additional alternatives to money bail and personal recognizance. An existing example of such legislation is the Federal Bail Reform Act of 1966 which authorizes release on recognizance with one or more additional conditions such as placing the defendant in the custody of a designated person or organization; restricting his travel, association, or place of abode; or requiring night-time return to detention.[28]

The conditional release order formulated by the United States Court of Appeals for the D.C. Circuit in the recent case of Ball v. United States, (no. 21,963) illustrates the kind

28. 18 U.S.C. §3146 added by P.L. 89-465, June 22, 1966.

of tailor made conditions which can be drafted and the intelligent placing of this responsibility on defense counsel. The defendant was held in custody for six months, on $5,000 cash bond, while awaiting trial on charges of rape, robbery and sodomy. The defendant had a record of arrest for homicide, disorderly conduct and juvenile offenses, no felony convictions, and some community ties. On June 26, 1968, the appeals court agreed to consider non-financial release but indicated that the serious penalties involved required more than minimal conditions of release to reasonably assure appearance. Defense counsel was requested to submit a proposed order incorporating conditions involving daytime release, third party supervision, securing employment, depositing part of future earnings as security, and reporting periodically to the court and the United States Attorney. On July 12, 1968, the court ordered Ball released on personal recognizance on the following conditions:

1. Initially, he shall be released from the jail from 9 to 5 to report to the offices of the Offender Rehabilitation Project 711 14th Street, N.W., Room 810, to obtain aid in seeking employment, and to make and keep job interviews. On each subsequent day he shall be released from jail only between the hours of 9 to 5, until his attorney notifies the Chief Judge of the District Court that he has in fact obtained regular employment.

Upon the representation of counsel that appellant Ball has obtained regular employment, he shall be released from jail on a full-time basis on the following conditions:

(1) He shall appear in the District Court when required to do so and not depart the jurisdiction of the District Court without leave of Court.

(2) He shall reside with his family at 3339 - 17th Street, N.W., Washington, D. C., and notify the Court of any change of address.

(3) He shall be a party to the following arrangements among him, Mr. Douglas Lindsey, Roving Leader, Department of Recreation, and the Court:

(a) He shall report once a week to Mr. Douglas Lindsey, 3149- 16th Street, N. W.

3. Facilitating the Posting of Bail

(a) Direct Access to Telephones for Detained Defendants

After arraignment defendants remanded to the custody of the Department of Correction are permitted to make one free telephone call from the court detention pens. Data are not available on the percentage of persons who actually make or complete such a call. After admission to a detention institution, those who have not completed a call are given a choice between having a Correction's Officer make a telephone call for them or receiving a free stamped envelope.

For those who are unable to complete the initial call from the court detention pens, the subsequent alternatives are much less effective in enhancing a defendant's ability to raise bail than a call made in-person would be. During the course of the Manhattan Bail Reevaluation Project (August 1966 - December 1967), Vera found that defendants who were permitted to make unlimited in-person calls from the Manhattan House of Detention were twice as likely to be bailed out as those whose communications were restricted by normal procedures.[29]

During the first six months of the Telephone Project, 22 percent of the 1,911 defendants who used the phone were then able to raise bail. In order to isolate the influence of the telephone calls, a controlled experiment was then conducted. A group of defendants, who had bail of $2,000 or less and who had been detained for ten days or less, was randomly divided into two subgroups. The first was permitted to make phone calls immediately, as was the normal practice during the Telephone Project. The second group was denied access to the phone for one week. During the first week, 25.4 percent of those permitted to use the phone were able to raise bail, while only 12.5 percent of those denied phone

29. See Lenihan, "The Effect of Telephone Communication on Release From a Detention Prison", on file at the Vera Institute of Justice.

calls were able to raise bail. After the first week, the restriction was lifted from the second group and the remaining persons in both groups were permitted to use the phone. During the second week, 6 percent of those remaining in the first group were bailed out. Of those remaining in the second group, 24 percent were bailed out -- a rate comparable to that achieved by the first group during the first week. By the end of the second week 33 percent of the group with continuous access to the phone had been bailed out, compared with 28 percent of those with limited access to the phone. The experiment not only demonstrated the value of unlimted phone calls, but the importance of early calls as well.

The risk that prisoners would use the phone to intimidate witnesses or arrange for the destruction of undiscovered evidence proved to be virtually non-existent. In only one case during the entire project was it necessary for Vera to activate the cut-off button which had been provided on the phone used to monitor prisoners' calls.

On the basis of the Telephone Project, Vera recommends the installation of pay phones on all floors of all detention

institutions to be accessible, without limit, to all prisoners, seven days a week, from 7 A.M. to midnight. (During the experiment only one phone was used, five days a week, from 10:00 A.M. to 5:00 P.M.) Free calls should be made available to indigents. The calls might be monitored on a spot basis through a switchboard connected to all outgoing lines. Prisoners should be provided with bi-lingual printed matter describing where, when, and how to post bail which could be read to families or friends.

Requests to make phone calls would be made in writing stating the number to be called, the party sought, and the purpose of the call. Preference should be given to calls made for the purpose of raising bail, but other calls for legitimate purposes, such as securing clean clothes and toilet articles or ordering financial or family affairs, should be permitted.

(b) Other Methods For Facilitating The Posting of Bail

In addition to providing detained defendants with unlimited, direct access to a telephone, there are several additional procedural changes which would enhance a defendant's ability to post bail.

First, after bail is set at arraignment, the bridgeman or other court officer, should, in a voice which can be heard throughout the courtroom, announce the amount of bail which has been set and ask, "Is there someone in the courtroom prepared to post bail on behalf of defendant X?" At the present time persons so prepared occasionally do not hear the amount of bail set or are not able to reach the bench before the defendant is taken back to the detention pens, thus necessitating a trip to the House of Detention both for the defendant and for the person posting bail.

Second, when a person attempts to post bail on behalf of another at a house of detention, and wishes to have the money returned to himself rather than to the defendant, he is sent to find a notary for the witnessing of his signature. The difficulty in finding a notary at certain hours leaves the person with a choice between letting the defendant sit in jail for an extra night or posting the money in the name of the defendant to whom the money would then be returned. In cases in which cash bail is deposited, there is no statutory requirement of notarization, and a Correction Officer should be empowered to witness the

signature. For cases in which a surety bond is posted, there should be a notary public at all houses of detention after the closing time of notary offices in the vicinity of the house of detention.

Third, a brochure should be prepared by the Department of Correction or other appropriate agency and made available in court which would explain: (a) where bail could be posted; it would explain that a trip to the detention institution by a person posting bail for a detained defendant is always necessary, even where the money is actually deposited in court;[30] (b) how to reach all detention institutions by public transportation; (c) what a bondsman is, when he is needed, how much he charges, where and when he is available, and what documents should be brought to him.

30. A person posting bail in court on behalf of a defendant in detention must go to the clerk's office to obtain a Discharge Piece. This document must be signed by the judge and taken to the House of Detention.

B. Decreasing the Length of Pretrial Detention

The average length of pretrial detention has been increasing steadily from 18.5 days in 1965, to 22.2 days in 1966, to 26.5 days in 1967, to approximately 30.1 days at the present time.[31] These figures understate the length of detention for persons who do not obtain release at any time prior to trial, because within the average are substantial numbers of cases in which bail was posted shortly after admission to detention.[32] While data are not available on the duration of custody of all defendants detained for the entire pretrial period, it is known that on August 1, 1968 the average detained defendant in the jurisdiction of the Supreme Court had already spent over 140 days in jail.[33]

The causes of the continual increase in the length of time necessary to dispose of a case are complex. The most serious problems, the inefficiency in scheduling cases, the misallocation of judicial manpower, and the dilatory tactics practices by defense counsel, all of which produce continuous adjournments, can only be described in this report. A separate report detailing a program of reform in these areas will be separately submitted to the City within six weeks of the date of this report.

31. See pages 18 and 20 supra.

32. The percentage of those detained who post bail within one week is probably in excess of 10 percent. See discussion of Vera Telephone Project. supra p. 54.

33. See Table 13 infra p. 68.

Adjournments are both a cause and a symptom of the delays and backlogs in the courts. Some adjournments are obviously necessary. A defendant may require time to obtain counsel or to prepare a defense, or the prosecution may request a medical examination of the defendant or require time to analyze evidence. But these adjournments constitute a small percentage of the total. Most adjournments are caused either by inefficiency in the judicial system, tactical maneuvering, or unforeseen intervening factors.

Inefficiency causes adjournments when a case which is ready for action cannot be reached because of an unrealistically large number of scheduled cases or an inadequate number of available judges. It also causes adjournments when a party is not present because of non-notification or improper initial scheduling. Tactical maneuvering produces adjournments when attorneys continually try to avoid certain judges and Assistant District Attorneys. Moreover, private attorneys are often paid for each court appearance and therefore have little incentive to dispose of cases. They often adjourn cases because they have not been paid or because drawing out cases will inure to the benefit of the defendant as witnesses disappear, memories fade and the prosecutor becomes more likely to agree to plea reductions which would not otherwise be forthcoming. Many cases are adjourned because between the scheduling and arrival of a date of appearance, sicknesses, appearances in

another court, or special assignments of police officers prevent the attendance of a necessary party. With the exception of the Calendar Control Project in the Bronx, there is no procedure available for rescheduling these cases in advance of the previously scheduled court date,[34] and the parties who do appear have wasted their time.

As a result of these factors, as much as 70 percent of the Criminal Court caseload is adjourned each day, and more than 50 percent of the court's time is spent handling these adjournments. The excessive proportion of time which judges spend on this administrative function leaves insufficient time to deal with cases susceptible of disposition.

Because so many cases appear on each daily calendar, attorneys can obtain an adjournment with or without the consent of the judge. By avoiding the first call of the calendar and appearing only after a sufficient number of cases have been "marked ready," an attorney can feign readiness for trial knowing that there is no judge available to accomodate the case.[35] Except for one experiment in Manhattan,

34 This project is being conducted by Vera for the Criminal Justice Coordinating Council. In the first 27 weeks of operation, 907 cases were adjourned without unnecessary court appearances by the parties or fruitless calendar recitation by the judge. See Calendar Control Project: Weekly and Cumulative Statistics, January 3, 1969 on file at the Vera Institute of Justice.

35 Under the impetus of the Court Delay and Sentencing Committee of the Criminal Justice Coordinating Council, two "back-up" parts were added to the part 2A complex (the trial part for misdemeanors) in November 1968. Cases ready for trial are calendared into the back-up parts with no more than seven cases a day scheduled to be heard by one judge. Adjournments are only obtainable under extraordinary circumstances such as illness or death of a necessary party.

there are no real "trial parts" where a realistic number of cases are scheduled and certain to be heard. Instead, cases are generally adjourned to the "calendar parts" whose staggering caseload destroys all pressure on an attorney to be ready for hearing or trial.

Thus, in order to combat the endless succession of adjournments, scheduling techniques must be improved, and advance re-scheduling procedures adopted. Judge shopping must be curbed and sanctions imposed on attorneys who appear late or unready without reasonable justification. No such sanctions can be instituted, however, until judges' time is reallocated to dealing with cases which are, or are supposed to be, ready for hearing, motion, or trial.

While the overall program for decreasing court delays is to be separately submitted, there are three areas of reform which can be outlined at the present time.

1. Advance Plea Bargaining.

Most cases in which there is a conviction are disposed of by guilty plea. At the present time Assistant District Attorneys are so rushed that defense attorneys have little time to discuss a case before it is called. A hurried conference takes place before the bench, wasting the court's time and often producing undue pressure on the defendant to "take a plea". If the defense attorney believes that the presiding judge is harsh, he will attempt to secure an adjournment and present his case before a different judge at a later date.

Once again, an alternative system is required, and some of the necessary elements have been identified. During the period of October 7 to November 22, 1968 a special conference Part was convened in Brooklyn Criminal Court in an attempt to clear up the backlog of cases. Of 1,255 cases appearing on the experimental calendar during the seven weeks, 541 cases or 43% of the total were brought to final disposition. An additional 211 cases (17%) were waived to the grand jury, transferred to the Supreme Court or sent to a hearing part.[36]

The ingredients of expedited dispositions included, first and foremost, an atmosphere conducive to the offering and acceptance of pleas. The Legal Aid attorneys and ADAs were briefed in advance on the operation of the special part. Second, the sentence was agreed on in advance of the entry of the guilty plea, eliminating the incentive on the part of the defense attorney to adjourn the case and wait for a less severe judge. It should be

36 These statistics, compiled by Vera, differ from those compiled by the Kings County District Attorney's Office, because Vera consolidated cases arising out of the same facts and circumstances. Thus, a case involving a weapon, grand larceny of an automobile, an unregistered vehicle, improper plates, etc., which might appear as six different calendar numbers would be counted as one case. If the disposition was two pleas of guilty and four dismissals, the Vera count would be one case disposed of by one plea of guilty since the disposition of the case was by plea. If the case had been adjourned, it would be one case, one adjournment. An instance of two separate arrests of the same defendant was counted as two cases.

noted that final disposition of cases was dependent upon the judge's acceptance of the sentence worked out by Legal Aid and the ADA. The number of guilty pleas declined during the final three weeks of the experiment when a judge, less willing to accept such negotiated sentences, was sitting. Nevertheless, the concept of advance agreement on plea and sentence is sound and should become a matter of standard practice. One additional ingredient -- the development of social history information on the defendant -- could reduce conflicts between the judge and the parties to the negotiated plea. Such information would provide a rational basis for supporting the sentence recommendations, and, as is being demonstrated by the Bronx Sentencing Project, can be compiled within a brief period of time.[37]

2. Decreasing the Length of Time Between Conviction and Sentence.

The seventy percent increase in detention cases awaiting trial or pretrial action,[38] has not been matched in cases awaiting sentence. The following table shows that during the course of 1968 there has been an increase of 14.7 percent in the number of persons in detention who are awaiting sentence in Criminal Court and a 21.2 percent increase in Supreme Court.

37 The Bronx Sentencing Project, being conducted by Vera for the Criminal Justice Coordinating Council, is providing concise, objective social histories and updated criminal records within one week and in many cases, within a few hours.

38 See supra p.15 .

Table 12

Average Number of Males Awaiting Sentence for Selected Months in 1968

Month	Criminal Court	Supreme Court
January	327	695
July	384	626
November	375	842

Source: Department of Correction

There is at least one readily implemented procedural change which could have a significant impact on the number of detained persons awaiting sentence. At the present time, Criminal Court detention cases may be adjourned for a maximum of ten days, exclusive of weekends and legal holidays, for presentence investigations.[39] Such investigations may consist of obtaining a criminal record and a social history or only the former.[40] In cases in which only the criminal record is obtained, the total time needed to take fingerprints, transport them, search police records, and send the report back to court is a maximum of seven days, weekends included.[41] Since the average duration of such adjournments is thirteen days (in the Bronx), many defendants are spending an extra week in detention unnecessarily if they are not subsequently sentenced to a prison term.

39 Sec. 45, New York City Criminal Court Act (McKinney's 29A Part 3 (1963).

40 Compare CCP§943 with Rule 11 of Criminal Court Act and proposed CPL § 200.10 with CPL § 200.20.

41 See memorandum of Thomas Chittenden, Director of Bronx Sentencing Project, to the Hon. Edward R. Dudley, August 21, 1968, on file at the Vera Institute of Justice.

Assuming a constant flow, halving the length of adjournments would correspondingly halve the number of persons in detention in these cases.

Therefore, it is recommended to the Appellate Division, First and Second Departments, that Rule 11 of the New York City Criminal Court Act can be amended to add the following paragraph.

> Upon conviction or a plea of guilty in cases in which the defendant is remanded to custody, an adjournment for the purpose of conducting a presentence investigation which is limited to the taking of fingerprints and the securing of information as to the defendant's previous criminal record shall not exceed five days, exclusive of Saturdays, Sundays, and legal holidays.

3. Imposing Absolute Limits on the Length of Pretrial Detention.

Neither the existing Code of Criminal Procedure nor the Proposed New York Criminal Procedure Law adequately safeguard the constitutional right to a speedy trial.[42]

42 The existing guarantee of the right to a speedy trial (CCP sec. 8(1) does not contain readily enforceable rights. The law deals only with indictable offenses (CCP secs. 667-669) and provides that a defendant must be indicted at the next "term" of court, an anachronism of circuit riding days which the ABA has criticized for resulting in "a lack of uniformity throughout a jurisdiction" and difficulty for defendants and counsel to understand. (See, Standards Relating to Speedy Trial, Tentative Draft, American Bar Association Project on Minimum Standards for Criminal Justice, May 1967, at 14, hereinafter cited as "ABA-Speedy Trial."). A defendant under indictment must be brought to trial at the next term of the court. If these vague time limits are not observed, the court may dismiss the indictment, release the defendant on recognizance or bail, and only upon application of the defendant. The proposed law contains a recapitulation of the right to a speedy trial (CPL sec. 15.20), but contains only one specific time limit--a right to grand jury action with 45 days after being held for grand jury action. (CPL sec. 95.80). The only other protection is a right to a dismissal of an indictment, upon motion, on the general ground that the defendant has been denied the right to a speedy trial. (Sec. 105.40 (1)(g).) No elaboration is provided.

Many jurisdictions have enacted legislation which specifies the maximum permissible period of time from arrest or arraignment to trial. If a defendant is not brought to trial within statutory time limits ranging from 75 days to six months, he is entitled to an absolute dismissal or to release without bail.[43] Legislation of this nature has been recommended by the President's Crime Commission and the American Bar Association.[44]

Table 13 below shows that on August 1, 1968 the average length of custody for detained persons awaiting action in Supreme Court was 4.7 months. The median length of detention was 5.6 months. A total of 643 defendants (22.0%) had been in detention over six months and 75 defendants (2.7%) for over a year.

43 Cal. Pen. Code, sec. 1382 (fifteen days from the time a defendant is "held to answer" until a criminal information must be filed; 60 days from the filing to trial); Ill. Rev. Stat. c. 38, sec. 103-5(a) (1965) (120 days from arrest to trial). Iowa Code Ann. secs. 795.1, 795.2, (Supp. 1966) thirty days from the time the defendant is held to answer until indictment; 60 days from indictment to trial). Mass. Ann. Laws, c.277, sec. 72 (1956) (six months from imprisonment or bail until trial).

44 See, President's Commission on Law Enforcement and The Administration of Justice, The Challenge of Crime in a Free Society 155 (1967). (4 mo. for felony defendants). ABA Speedy Trial 14.

Table 13

Number of Persons Awaiting Action in Supreme Court by County of Jurisdiction and Time Spent in Detention as of August 1, 1968

	Total All Counties		New York		Kings		Bronx		Queens		Richmond	
Period of Detention	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total All Periods	2883	100	943	100	991	100	571	100	350	100	28	100
1 Day to 1 Month	317	11.0	82	8.7	75	7.6	123	21.5	31	8.8	6	21.4
Over 1 to 2 Months	462	16.0	145	15.4	137	13.8	133	23.3	42	12.0	5	17.9
Over 2 to 3 Months	493	17.1	199	21.1	132	13.3	101	17.7	58	16.5	3	10.9
Over 3 to 4 Months	385	13.4	163	17.3	98	9.9	70	12.3	51	14.6	3	10.9
Over 4 to 5 Months	327	11.3	108	11.4	131	13.2	49	8.6	37	10.6	2	7.1
Over 5 to 6 Months	266	9.2	81	8.6	119	12.0	31	5.4	33	9.4	2	7.1
Over 6 to 7 Months	201	7.0	58	6.1	97	9.8	22	3.8	22	6.3	2	7.1
Over 7 to 8 Months	128	4.4	30	3.2	61	6.2	12	2.1	23	6.6	2	7.1
Over 8 to 9 Months	94	3.3	12	1.3	55	5.5	10	1.8	16	4.6	1	3.5
Over 9 to 10 Months	65	2.2	20	2.2	33	3.4	5	.9	6	1.7	1	3.5
Over 10 to 11 Months	36	1.2	11	1.2	16	1.6	1	.2	8	2.3	-	-
Over 11 to 12 Months	34	1.2	7	.7	14	1.4	6	1.0	7	2.0	-	-
Over 12 to 18 Months	57	2.0	21	2.2	16	1.6	8	1.4	12	3.5	-	-
Over 18 to 24 Months	16	.6	5	.5	6	.6	-	-	4	1.1	1	3.5
Over 24 Months	2	.1	1	.1	1	.1	-	-	-	-	-	-
Mean Average	4.7 Months		4.5 Months		5.3 Months		3.5 Months		5.3 Months		4.6 Months	
Median	5.6 Months		3.7 Months		5.9 Months		2.3 Months		3.7 Months		3.0 Months	
1965 Median	2.3 Months		1.8 Months		3.0 Months		2.2 Months		3.1 Months		1.4 Months	

Source: Department of Correction

In the interests of fundamental justice as well as in the interests of relieving the overcrowding of detention institutions, Vera recommends that the Mayor include as part of his legislative program, legislation which would:

1. Limit pretrial detention to two months for non-indictable offenses (most misdemeanors and offenses) and four months for indictable offenses. Upon the expiration of such period the defendant would be entitled to release without bail.[45]

2. Limit the period of time between arrest and trial to three months for non-indictable offenses and six months for indictable offenses. Upon the expiration of such period the defendant would be entitled to an absolute dismissal.[46]

3. Exclude from the computation of time elapsed all "necessary delays" such as adjournments requested by the defendant.[47]

4. Assure the effectiveness of newly created rights and remedies by not making the commencement of the running of statutory time periods contingent upon a demand by the defendant.[48]

45 See, ABA-Speedy Trial, Sec. 4.2.

46 Ibid. Sec. 4.1.

47 Ibid. Sec. 2.3.

48 Ibid. Sec. 2.2. The ABA sides with the view taken by the minority of appellate courts and adopts the reasoning of Note, 57 Colum. L. Rev. 846, 853 (1957), "A strong minority, however, rejects the "demand doctrine" and requires only a motion to dismiss filed before trial. These Courts place the duty of procuring prompt trial upon the state, attributing significance to the fact that only the state is empowered to bring the charge to trial. Forcing defendant to press for speedy trial would, according to this view, enable the state to do nothing until defendant acts, and then, if he acts too late, to claim waiver.